

No. 2236

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

R. M. COBBAN, E. B. WEIRICK, Individually and
Also as Trustee, and THE PAYETTE LUMBER
& MANUFACTURING COMPANY, a Corpora-
tion,

Appellants,

vs.

MOLLIE CONKLIN,

Appellee.

VOLUME I.
(Pages 1 to 256, Inclusive.)

Upon Appeal from the United States District Court for the
District of Idaho, Southern Division.

FILED

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INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Amended Answer, Separate, of Defendant Pay- ette Lumber and Manufacturing Company	40
Amended Bill of Complaint.....	1
Answer of Defendants R. M. Cobban and E. B. Weirick	65
Assignment of Errors.....	536
Attorneys of Record, Names and Addresses of	1
Bill of Complaint, Amended.....	1
Bond on Appeal.....	545
Certificate of Clerk U. S. District Court to Tran- script of Record, etc.	551
Certificate of Special Examiner to Depositions, etc.	311
Citation	549
Commission to Notary Public Holton to Take Certain Testimony	285
Decree	522
DEPOSITIONS ON BEHALF OF COM- PLAINANTS:	
COLEMAN, MRS. S. J.....	302
Cross-examination	309
SWAYNE, R. B.	300
Cross-examination	302

Index.	Page
DEPOSITIONS ON BEHALF OF COM- PLAINANTS—Continued:	
WRIGHT, H. M.	288
Cross-examination	297
Redirect Examination	299
DEPOSITIONS ON BEHALF OF DEFEND- ANTS:	
BENSON, JOHN A.	377
Cross-examination	397
Redirect Examination	434
Recross-examination	440
CAMPBELL, J. C.	316
Cross-examination	328
GLOVER, CLARA E.	369
Cross-examination	371
LAVENSON, JAMES H.	365
Cross-examination	367
Examiner's Certificate to Testimony, etc.....	241
Examiner's Certificate to Testimony, etc.....	284
EXHIBITS:	
Complainants' Exhibit "D" (List of Pow- ers of Attorney).....	469
Complainants' Exhibit "G" (Statement of Account Rendered to Reddy, Campbell & Metson)	468
Complainants' Exhibit "N" (Letter Dated San Francisco, December 11, 1901, from J. C. Campbell to A. R. Conklin)	475
Complainants' Exhibit "N-1" (Letter Dated San Francisco, Cal., December	

EXHIBITS—Continued:

11, 1901, from John A. Benson to J. C. Campbell)	476
Complainants' Exhibit "O" (Letter Dated January 29, 1902, from J. C. Campbell to N. E. Conklin)	478
Complainants' Exhibit "P" (Letter Dated October 27, 1902, from J. C. Campbell to Norman Conklin)	479
Complainants' Exhibit "Q" (Letter Dated San Francisco, November 7, 1902, from W. H. Metson to N. E. Conklin)	481
Complainants' Exhibit "R" (Unsigned Letter Dated Bakersfield, Cal., June 13, 1902, Addressed to the Bank of California)	482
Complainants' Exhibit "S" (Letter Dated Bakersfield, Cal., June 13, 1902, from Mollie Conklin to the Anglo-California Bank)	482
Complainants' Exhibit "T" (Revocation of Powers of Attorney Signed by Mollie Conklin)	483
Complainants' Exhibit "U-1" (Letter Dated Bakersfield, Cal., April 28, 1903, from Mollie Conklin to John A. Benson)	484
Complainants' Exhibit "U-2" (Postoffice Receipt)	231
Complainants' Exhibit "U-3" (Registry	

Index.	Page
EXHIBITS—Continued:	
Return Receipt from Postmaster at San Francisco to John A. Benson)....	231
Complainants' Exhibit "V" (Amended De- cree in Re Estate of Alvah Russell Conklin)	464
Complainants' Exhibit "W" (Receipt for Swamp Land Patents Dated July 11, 1900, from N. E. Conklin to John A. Benson).....	467
Defendants' Exhibit "A" (Relinquishment of Lands from Mollie Conklin and Ed- ward A. Reddy to the United States of America).....	454
Defendants' Exhibit "A" (Deed Dated May 19, 1903, from E. B. Weirick to the Pay- ette Lumber and Manufacturing Com- pany).....	485
Defendants' Exhibit "B" (Order Authoriz- ing Surrender of Lands).....	457
List of Powers of Attorney.....	469
Names and Addresses of Attorneys of Record..	1
Opinion.....	487
Order Relative to Exhibits on Appeal.....	548
Petition for Appeal and Order Allowing Ap- peal.....	544
Powers of Attorney, List of.....	469
Replication of Mollie Conklin to Answer of R. M. Cobban et al.....	118
Replication of Mollie Conklin to Answer of Payette Lumber & Mfg. Co.....	64

Index.	Page
Return to Record.....	550
Separate Amended Answer of Defendant Pay- ette Lumber and Manufacturing Company.	40
Stipulation of Facts.....	520
Stipulation Relative to Record on Appeal.....	532
TESTIMONY ON BEHALF OF COMPLAIN- ANTS:	
CONKLIN, MRS. MOLLIE.....	121
Cross-examination.....	167
Redirect Examination.....	182
CONKLIN, N. E.....	198
Cross-examination.....	235
OLCESE, MRS. MARGARET CONKLIN.	185
Cross-examination.....	194
Redirect Examination.....	198
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
COBBAN, R. M.....	258
Cross-examination.....	266
Redirect Examination.....	277
HOOVER, E. M.....	280
Cross-examination.....	281
Redirect Examination.....	282
Recross-examination.....	283
WEIRICK, E. B.....	243
Cross-examination.....	251
Testimony Taken at Boise, Idaho, June 24, 1910, Before Special Examiner McCracken.....	242
Testimony Taken January 3, 1910, Before Spe- cial Examiner McCracken.....	120

[Names and Addresses of Attorneys of Record.]

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*In the Circuit Court of the United States for the
District of Idaho, in the Ninth Judicial Cir-
cuit, Central Division.*

IN EQUITY.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually,
and Also as Trustee, PAYETTE LUMBER
AND MANUFACTURING COMPANY, a
Corporation, JOHN DOE, MARY DOE,
RICHARD ROE and THOMAS ROE,

Defendants.

Amended Bill of Complaint.

Comes now Mollie Conklin, complainant in the above-entitled cause, and complains of R. M. Cobban, E. B. Weirick, in his individual capacity and also as trustee, Payette Lumber and Manufacturing Company, a corporation, John Doe, Mary Doe, Richard Roe and Thomas Roe, defendants, and for cause of complaint alleges:

I.

That complainant is domiciled in, and is a citizen of the State of California, United States of America, and is a resident of the town of Berkeley, in said last-named State; that she was the wife and is the widow of A. R. Conklin, who is dead, and who is hereinafter mentioned.

II.

That E. B. Weirick, who is sued herein individually and also as trustee, is domiciled in, and is a citizen of, the State of Montana, United States of America, and is a resident of the city [1*] of Butte, in the county of Silver Bow, in said last-named State.

III.

That defendant, R. M. Cobban, is domiciled in, and is a citizen of, the State of Montana, United States of America, and is a resident of the city of Missoula, in the county of Missoula, in said last-named State.

IV.

That defendant, Payette Lumber and Manufacturing Company, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, United States of America, and is domiciled in, and is a citizen, and a resident, of said last-named State; that said corporation is, among other things, authorized to engage generally in the business of acquiring, buying and selling, and of carrying on commerce in, timber and timber lands in said State of Minnesota and elsewhere; that said corporation is, and continuously, for more than one and one-half years immediately preceding the

*Page-number appearing at foot of page of original certified Record.

commencement of this action, has been doing business in the State of Idaho, and in the county of Boise, and elsewhere, in said last-named State, by permission of said State of Idaho and under its laws.

V.

That defendant, John Doe, is a citizen of the State of Montana; that defendants, Mary Doe, Richard Roe and Thomas Roe, are citizens of the State of Minnesota; that complainant does not know, and is unable to ascertain, the true names of said defendants, John Doe, Mary Doe, Richard Roe and Thomas Roe, which are their fictitious and not their real names, and prays that she may substitute the real names of said defendants herein [2] when such real names shall have been ascertained.

VI.

Plaintiff alleges that the value of the lands in controversy herein, and hereinafter mentioned and called and known as "lieu land," is largely in excess of \$5,000.00; and that the undivided one-half interest in controversy herein, as between this plaintiff and these defendants, is in excess of the value of Five Thousand Dollars (\$5,000).

VII.

That complainant is the owner in fee, as tenant in common, of an undivided one-half interest in said lands hereinafter mentioned; that she is entitled to the immediate possession of said lands and of the whole thereof; that said lands are not in the possession of complainant nor of defendants, nor either of them; that said lands, on the contrary, are vacant, unoccupied, wild and uncultivated timber lands, and

are not in the possession of any person; that said lands are situated in the State of Idaho, United States of America, and in the county of Boise, in said State, and are described as follows, to wit:

1. SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 19, tp. 13 N., R. 5 E., B. M.
2. NW. $\frac{1}{4}$; SW. $\frac{1}{4}$; S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 26, tp. 16 N., R. 4 E., B. M.
3. N. $\frac{1}{2}$ of NE. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$; NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 17, tp. 16 N., R. 4 E., B. M.
4. NW. $\frac{1}{4}$; N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 35, tp. 16 N., R. 4 E., B. M. [3]
5. SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 29, tp. 16 N., R. 5 E., B. M.
6. NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 7, tp. 13 N., R. 5 E., B. M.

The northwest quarter of section 26, tp. 16 north, range 4 east; the west half of southeast quarter, east half of southwest quarter, lots three and four, section nineteen, township fifteen north, range four east; the southeast quarter, east half of northeast quarter, section twenty-five, township fifteen north, range three east; lots one and four, section thirty-five, township twelve north, range three east, Boise meridian; lot four, section five, township fifteen north, range four east; lot two, section five, township fifteen north, range four east; southeast quarter of northeast quarter, section twenty-nine, township sixteen north, range four east; lot four and south half of northwest quarter, section four, township fifteen north, range four east; lot three, section five,

township fifteen north, range four east; lot two, section six, township fifteen north, range four east; lot one of section six, township fifteen north, range four east; east half of southeast quarter, southwest quarter of southeast quarter, section thirty-one, the south half of southeast quarter of section thirty-two, all in township sixteen north, range four east; the southwest quarter of section twenty-eight, township sixteen north, range four east; southeast quarter of northeast quarter, section thirty-one; the southwest quarter of section thirty-two, township sixteen north, range four east; southeast quarter, east half of northeast quarter, section twenty-six, township thirteen north, range three east, lot one, southeast quarter of northeast quarter of section two, and west half of southwest quarter section one, township twelve north, range three east; north half of northeast quarter, section twenty-nine; northeast quarter of southeast quarter, section thirty-one; [4] west half of southwest quarter, and southeast quarter of southwest quarter, section thirty-two, township fifteen north, range four east; south half of southeast quarter, south half of southwest quarter, northwest quarter of southwest quarter, section five, township fifteen north, range four east; southeast quarter of northwest quarter, section seven, township thirteen north, range five east. The whole hereof being in Boise meridian.

VIII.

That Joseph C. Campbell is a citizen and resident of City and County of San Francisco, State of California; that he is an attorney and counsellor at law,

and is now practicing law, and for more than twenty years last past has, continuously so practiced, in the courts of said State, and of the United States, and having an office and his principal place of business in said City and County of San Francisco; that Patrick Reddy died on or about the 26th day of June, 1900; that said Patrick Reddy was for many years just prior to, and until his death, the law partner of said Joseph C. Campbell, having an office at the place aforesaid and practicing before the aforesaid courts; that said Reddy and said Campbell, during all of said last-mentioned time, together with one William H. Metson, practiced law under the firm name and style of Reddy, Campbell & Metson; that since the death of said Reddy, said Campbell has continued such practice, as a partner of said Metson and others, under the firm name and style of Campbell, Metson & Campbell.

That said Patrick Reddy was a near relative by marriage of complainant's said husband, and was, also, during their joint lives, an owner, as tenant in common, of a one-half undivided interest, together with complainant's said husband, who owned a like interest therein, of the certain lands, called "base lands" [5] hereinafter mentioned; that said Reddy and said Campbell and said firm of Reddy, Campbell & Metson, were complainant's husband's attorneys and solicitors during his lifetime, and that Reddy acquired his said one-half interest in said "base lands" from complainant's said husband, as a fee for legal services; that after the death of complainant's husband and of said Reddy, said Joseph

C. Campbell, and said firm of Campbell, Metson & Campbell, acted as complainant's attorneys, solicitors and advisers, continuously, up to, and until long after the month of August, 1900, and said Campbell, during said last-mentioned time was complainant's family solicitor and legal adviser.

IX.

Said lands, known as and called herein, "base lands," were situated in the State of California, and prior to the month of June, in the year 1900, had been duly covered by and included within, and were then still covered by and included within a public forest reservation, under the laws of the United States; that during said year 1900, and in the month of August of that year, complainant was the owner in fee of that certain undivided one-half interest therein that had formerly been owned by complainant's husband, as in paragraph VIII aforesaid, and was then entitled to the possession of said lands; that at said last-mentioned time said Patrick Reddy was dead; that he died testate, and that his estate was then regularly in process of administration in the Superior Court of the City and County of San Francisco, State of California, sitting as a Court of Probate, and Emily M. Reddy and Edward A. Reddy were then the duly appointed, qualified and acting administratrix with the will annexed, and administrator with the will annexed, of said estate of Patrick Reddy, deceased; that said "base lands" are situated in the State of California and are described as follows, to wit: [6]

The SE. $\frac{1}{2}$ of NE. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$; N. $\frac{1}{2}$ of

SW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 11, in township 20 south, range 34 east, M. D. M.; the NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ (or lot 4) of section 6, in township 19 south, range 35 E., M. D. M., aggregating 323.13 acres in the County of Tulare, State of California.

2. The E. $\frac{1}{2}$ of SW. $\frac{1}{4}$; N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, and SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 15; S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 21, in township 20 south, range 35 east; SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 3; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 10 in township 21 south, range 34 east; east $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9 in township 21 south, range 35 east; SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, and N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 32 in township 22 south, range 35 east, Mount Diablo meridian, containing 800 acres in the County of Tulare, State of California.

3. The NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 31; N. $\frac{1}{2}$ of SW. $\frac{1}{4}$; NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of section 32 in township 17 south, range 35 east; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 6; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ (or lot 2) of section 7; E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$; NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of section 23; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ and NE. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 24 in township 18 south, range 34 east; E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 25 in township 19 south, range 34 east, Mount Diablo meridian, containing 760.79 acres in the County of Tulare, State of California.

4. The southwest quarter of northwest quarter; west half of southeast quarter, and the southeast quarter of southeast quarter of section twenty-six

(26), township 20 south, range 35 east, M. D. M., containing 160 acres in the County of Tulare, State of California. [7]

5. The west half of southeast quarter and southwest quarter of section fourteen (14) in township eighteen (18) south, range thirty-four (34) east; also the east half of northeast quarter and north half of southeast quarter of section sixteen (16) in township eighteen (18) south, range thirty-four (34) east; also the south half of northwest quarter and southwest quarter of section fourteen (14) in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing six hundred and forty (640) acres in the County of Tulare, State of California.

6. The southeast quarter of northwest quarter of section three (3); the southwest quarter of northeast quarter of section three (3); the northeast quarter of northwest quarter (or lot 31) of section (3). The southwest quarter of northeast quarter of section (4) and the southwest quarter of southeast quarter of southeast quarter of section fifteen (15), all in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing two hundred and two-hundredths (200.02) acres in the County of Tulare, State of California.

7. The north half of southwest quarter, southeast quarter of southwest quarter and southwest quarter of southeast quarter of section twenty-three (23) in township twenty (20) south, range thirty-five (35) east, Mount Diablo meridian, containing one hundred and sixty (160) acres in the County of Tulare,

State of California.

8. The NW. $\frac{1}{4}$ of section 23; E. $\frac{1}{2}$ of sec. 10; E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, and SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 22; NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 15; NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 3, and NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 26 in T. 20 S., R. 35 E.; S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, and NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 14; W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 23 in T. 17 [8] S., R. 34 E.; SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 32, and NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 15; S. $\frac{1}{2}$ of NW. $\frac{1}{4}$; SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 33; N. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 34, in T. 17 S., R. 35 E.; SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 29; NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of sec. 30, in T. 18 S., R. 35 E.; W. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of sec. 34 in T. 18 S., R. 34 E., Mount Diablo meridian, containing 1560.00 acres in the County of Tulare, State of California.

9. The north half of northeast quarter of section nine (9); southwest quarter of northwest quarter and north half of southwest quarter of section fifteen (15), southeast quarter, southeast quarter of northeast quarter; northwest quarter of northeast quarter and northeast quarter of northwest quarter of section sixteen (16); north half of northeast quarter, and east half of northwest quarter of section twenty-two (22), township seventeen (17) south, range thirty-five (35) east, Mount Diablo meridian, in the County of Inyo, State of California.

10. The S. $\frac{1}{2}$ of SE. $\frac{1}{4}$; NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$; S. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of sec. 14, tp. 17 S., R. 34 E.; SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 13, tp. 18 S., R. 34 E.; and SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 10, tp. 20 S., R. 35

E., Mt. Diablo meridian.

That complainant was then and there the owner in fee, by like title and right, also, of the other base lands situated in the said State of California, and hereinafter referred to, but not described.

X.

That during the year 1900, John A. Benson, hereinafter mentioned, was, and for many years immediately preceding said last-mentioned year continuously had been, a client, and also the intimate personal friend of said Joseph C. Campbell; that [9] said Benson for many years last past has been, and still is, thoroughly learned in the laws of the United States respecting the acquisition, purchase and sale of its public lands, and during all of said last-mentioned time has been engaged as a business in the location, purchase, manipulation and sale of such lands, in the State of California, Idaho, and elsewhere in the states west of the Mississippi River.

XI.

Complainant is informed and believes, and therefore alleges, that during the month of August, 1900, said Joseph C. Campbell, John A. Benson, defendant R. M. Cobban, defendant E B. Weirick, and certain promoting stockholders of the thereafter incorporated company, to wit, the Payette Lumber and Manufacturing Company, one of which said promoting stockholders was one Henry Turrish, Vice-president of said Payette Lumber and Manufacturing Company, and other persons whose names are unknown to this plaintiff, did wrongfully and unlawfully agree, and did conspire and confederate to-

gether, by means of artifice and deceit, to induce complainant to surrender said "base lands" to the United States, and to select, under the laws of the United States in that behalf made and provided, other lands (herein called "lieu lands"), in lieu of said "base lands," and to cheat and defraud complainant out of such "lieu lands" when such "lieu lands" should have been so selected, and the heretofore named persons did conspire to cheat and defraud complainant out of the title, right of possession and possession and proceeds thereof, and to sell said "lieu lands" to themselves, and unlawfully to deprive complainant of the use, possession and enjoyment of said "lieu lands" and of the proceeds thereof, and to convert the same to their own use.

In this behalf complainant alleges that during the [10] month of August, 1900, in the office of, and in the presence and hearing of, said Joseph C. Campbell, in said City and County of San Francisco, it was orally agreed between said John A. Benson in his own behalf, and said complainant, and said Emily M. Reddy, as administratrix of the estate of said Patrick Reddy, deceased, through their attorney said Joseph C. Campbell, that said Benson should purchase, and said complainant and said estate should sell, to him the "base lands" hereinbefore in paragraph IX mentioned; that said Benson should pay therefor the sum of four dollars per acre, that deeds therefor, from said complainant and the administratrix and administrator of said estate to said John A. Benson should be made and placed in escrow, to be taken out of the escrow-holder's hands by said

Benson as he paid for the said lands, and that said Benson should pay therefor and complete payment for all of said “base lands,” and take all of said deeds out of escrow within ninety days thereafter.

That said John A. Benson then and there agreed to pay complainant and said representatives of said estate of Patrick Reddy, deceased, four dollars per acre for said “base lands”; that said Joseph C. Campbell then and there, and also theretofore, represented to complainant that said Benson was reliable and trustworthy and fully able to carry out his said promise.

That said negotiations for the sale to said Benson of said “base lands” were conducted by said Joseph C. Campbell on behalf of complainant and of said estate of Patrick Reddy, deceased, and for the said administrator and administratrix, on the one side, and by said John A. Benson, on the other, complainant then and there being present and assenting to said negotiation under his direction.

That at said last-mentioned meeting in August, 1900, at the office of said J. C. Campbell, it was suggested to said Benson, [11] on behalf of complainant, in the presence and hearing of said Campbell, that said deeds of said “base lands” should be drawn by said Benson, without expense to complainant or to said Reddy Estate, and when executed, that the same should be placed in escrow, paid for and taken out by said Benson as aforesaid, and that said Campbell and said Benson then and there agreed thereto.

XII.

That complainant then and there, and until long

afterward had implicit confidence in said Joseph C. Campbell and in his advice and counsel, and did also believe and rely upon the promise of said John A. Benson to draw deeds of said base lands in accordance with his aforesaid promise and agreement, and did also believe and rely upon the promise of said Benson to pay therefor said sum of four dollars per acre and to complete said payment, and to place said deeds in escrow and to take said deeds out of escrow within ninety days thereafter, and did rely upon said Joseph C. Campbell to see to it that said deeds were drawn as aforesaid and were placed in escrow as aforesaid and to protect the interests of complainant in said transaction, as it was his duty to do; and did also rely upon said representations of said Campbell that said Benson was then a reliable and trustworthy man and able to carry out his said promise, and did believe said Benson to be a reliable and trustworthy man and able to carry out his said promise.

XIII.

That, as complainant is informed and believes, and therefore alleges, the said Benson was not then reliable or trustworthy or able to carry out his said promise, and that he did not then or ever intend to draw said or any deeds of said "base lands," so as in paragraph XI aforesaid, nor to place said, or any, deeds in escrow, so as aforesaid, and said Campbell did [12] not then or ever intend to see that said or any deeds were so drawn or placed in escrow; and complainant alleges that said Benson did not then or ever draw or cause to be drawn said or any deeds of

said base lands conveying or purporting to convey said lands from complainant and said representatives of said Reddy Estate to said Benson, and, also, that said Campbell and said Benson, or either of them, did not then or ever place, or cause to be placed, said deeds, or any thereof, in escrow, so as aforesaid, and also that said Campbell did not see to it on behalf of complainant that said deeds were drawn in accordance with said agreement or placed in escrow, and that he did not in any way protect or endeavor to protect the interests of complainant in said base lands at all; that, on the contrary, said Benson soon after said agreement of August, 1900, did draw deeds purporting to convey said base lands from complainant and said representatives of said estate of Reddy to the United States of America; that said Benson then delivered said last-mentioned prepared deeds to said Campbell; that said Campbell, wrongfully and fraudulently, and in furtherance of said conspiracy, did then represent to complainant that said deeds prepared by said Benson, so as last aforesaid, were in fact deeds conveying said base lands from complainant and her said cotenant to said Benson, and did send said last-mentioned prepared deeds to complainant for her signature; that complainant, then and there believing said representations and promises of said Benson and Campbell, and relying solely thereon, did then place her signatures at the bottom of said last-mentioned deeds and did then immediately thereafter return the same to said Joseph C. Campbell; that said Campbell, not regarding his duty to complainant, and contrary to his repre-

sentations and promises, did immediately thereafter deliver the said last-mentioned deeds to said Benson, who immediately [13] caused the same to be placed on record in the respective counties in which the lands were situated, namely, in the records and in the Recorder's office of Tulare County at Visalia, California, and in the office of the Recorder and in the records of the County of Inyo, at Independence, California.

XIV.

That at the time complainant received said last-mentioned deeds from said Campbell for signature, said Campbell also sent therewith, for complainant's signature, papers which he represented to complainant to be like deeds to other base lands in the State of California, which complainant and said Reddy Estate owned as cotenants aforesaid, and at said time, and in like manner aforesaid, had agreed to sell to said Benson; that the papers so sent by said Campbell for complainant's signature made many documents, so that complainant was required, in order to comply with said Campbell's request, to sign her names many times; that complainant did not examine the papers that she then signed; that, on the contrary, complainant, solely believing in and relying upon the representations and promises of said Benson and Campbell, and trusting said Campbell wholly and implicitly, signed all of the papers then sent to her by him, as aforesaid, without examination, believing them deeds that had been prepared by said Benson in accordance with his said oral agreement and that had been examined and approved by said

Campbell for complainant, and complainant returned said papers, when so signed by her, to said Campbell, believing that he would place or cause the same to be placed in escrow and would wholly protect her interests in the business.

XV.

Complainant is informed and believes, and, therefore alleges, that among the papers so prepared by said Benson and [14] sent to her by said Campbell and signed by her, believing them to be deeds, as in paragraphs XIII and XIV aforesaid alleged, were papers, purporting to be applications to select lieu lands in place of said base lands, and papers purporting to be powers of attorney (which subsequently turned out to be the alleged powers of attorney hereinafter in paragraph XVII mentioned), which were in blank; and that said powers of attorney did not, at the time complainant signed the same, contain the name of any person as attorney in fact, or any date or dates; and that the name of R. M. Cobban, defendant, and said dates were inserted in said power of attorney after complainant signed the same by some person unknown to complainant, and wholly without complainant's knowledge or consent; that said Benson and said Campbell, well knowing that complainant trusted them and believed that they would carry out said agreement with and for her, and well knowing that complainant would sign any papers that said Campbell sent to her for that purpose without questioning or examining the same, surreptitiously, and in furtherance of said conspiracy and scheme to defraud, inserted said powers of

attorney among the deeds that said Campbell sent to complainant for her signature, as aforesaid.

XVI.

That neither said Campbell nor said Benson nor any other person ever *inform* complainant that she had signed deeds to said “base lands” in paragraph IX mentioned, conveying to the United States, or any “lieu lands” selections whatever in paragraph VII mentioned, and that complainant remained in total ignorance thereof, all the time believing that the deeds she had signed conveyed said “base lands” to said Benson, and had been placed in escrow, and that said lands were being paid for by said Benson as he took said deeds out of escrow until the month [15] of July, 1901, at which time complainant discovered that deeds were on record, purporting to convey said “base lands” to the United States in the office of the Recorder of Tulare County, at Visalia, California; that between the month of September, 1900, and the month of August, 1901, said Campbell paid to complainant in two separate payments and at different times the sum of twenty-seven hundred and fifty dollars, and stating that the same came from said Benson, without informing complainant that said deeds to the United States, or said lieu land selections, or that said powers of attorney were in existence, and when this complainant was wholly ignorant thereof, and said Campbell has, at all times, failed to inform complainant of the existence of any powers of attorney. That, upon the discovery of the recording of said deeds to the United States, in and to said “base lands” and of the existence of said

selections of "lieu lands," this complainant immediately thereafter went to the said Joseph C. Campbell and told him that she had found that said deeds had been placed of record and said lieu land selections filed, and asked him what it meant, stating then and there, to said Campbell, that she understood that the deeds she had made were in escrow; that said Campbell then and there stated and represented to complainant that it was all right, that deeds had been placed in escrow and were still there, and that if complainant was not satisfied, she could take the matter out of said Benson's hands at any time; that complainant then trusted said Campbell implicitly and believed that he spoke the truth, and for that reason refrained from prosecuting her inquiries further, also for the further reason that, about that time, she ascertained that said lieu land selections [16] were in her own name and purported to be made by her in person (together with said Emily M. Reddy and Edward A. Reddy as representatives of Patrick Reddy, deceased), and that when patents to said lieu lands should be issued the same would be issued in her name and in the name of said representatives, as cotenants; that thereafter and during the year 1902 said Joseph C. Campbell again represented to complainant that she, or her son Norman E. Conklin, for her, could take the aforesaid matter of the sale of said lands to said Benson away from said Benson at any time, if she so desired; that complainant even then believed and relied upon said statements and refrained from inquiring further; that said statements so made to complainant by said Campbell to

the effect that it was all right, that said deeds were still in escrow, and that, if she was not satisfied, she could take the matter of said lands away from said Benson at any time, were unqualifiedly and wholly untrue, in that, at the time said Campbell made said statements to complainant, said alleged powers of attorney hereinafter in paragraph XVII mentioned, had been placed of record in the Recorder's office of Boise County, at Idaho City, State of Idaho, in the records of Boise County, Idaho, and that said Campbell willfully made all of said false representations and statements to complainant and her agents in furtherance of the said conspiracy, and for the purpose of lulling to rest the inquiries and suspicions of complainant.

XVII.

That said alleged powers of attorney, in paragraphs XV and XVI before mentioned, are described as follows, to wit:

KNOW ALL MEN BY THESE PRESENTS: That whereas by an act of Congress approved June 4, 1897 (30 Stat. 36) it is provided,

That in cases in which a tract covered by a patent, is included within the limits of a public forest reservation the [17] owners thereof, may if he desires to do so relinquish the tract to the government and may select in lieu thereof a tract of vacant land open to settlement, etc.

And whereas on the nineteenth day of September, 1900, we, Mollie Conklin (a widow) of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, administrator and ad-

ministratrix of the estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State were the owners of the following described land,

The E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of section 3, E. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 15, S. $\frac{1}{2}$ of NE. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 21 in township 20 S., range 35 east, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 3 E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ and NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of section 10 in township 21 south, range 34 east, east $\frac{1}{2}$ of SE. $\frac{1}{4}$ of section 9 in township 21 south, range 35 east, SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ and N. $\frac{1}{2}$ of SW. $\frac{1}{4}$ of section 32 in township 22 south, range 35 east, Mount Diablo meridian, containing 800 acres in the County of Tulare, State of California, which said tract, prior to said date had been included within the limits of the Sierra Forest Reservation.

And whereas, on the said last-named day we surrendered the said land to the United States by deed of conveyance duly executed, by which we became entitled to select other lands of equal acreage in lieu thereof:

Now, therefore, we have made, constituted and appointed and by these presents do make, constitute and appoint, R. M. Cobban of Missoula in the County of Missoula, State of Montana, our true and lawful attorney for us and in our names, place and stead to enter into and take possession of each and every tract of public [18] land in any state or territory of the United States, that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid or any portion

thereof whether the said selection or selections be made by us personally or by someone else acting through power of attorney from us.

Our said attorney in fact is also hereby authorized and empowered to grant, bargain, sell and convey by good and sufficient deed all of the right, title and interest that we now own, hold or possess and also all of the right, title and interest that we may hereafter acquire, of, in and to the land that has been or may hereafter be selected as aforesaid or any part thereof for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid for us and in our names to make, execute, acknowledge and deliver all necessary deeds, conveyances, assignments or other instruments of whatever kind or nature.

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitutes or substitute shall lawfully do or cause to be done by virtue hereof.

For value received, the receipt whereof is hereby acknowledged, this power of attorney is hereby made and declared to be irrevocable by us or otherwise.

In witness whereof we have hereunto set our hands and seals in the first day of March, nineteen

hundred and one. [19]

MOLLIE CONKLIN. [Seal]

EDWARD A. REDDY, [Seal]

Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY, [Seal]

Administratrix of the Estate of Patrick Reddy, Deceased.

25¢ I. R. S. M. C.

E. A. R. E.

M. R.

Mar. 1st, 1901.

Signed, sealed and delivered in the presence of

C. E. GLOVER.

J. H. LARENSON.

State of California,

County of San Francisco,—ss.

On this first day of March, one thousand nine hundred and one, before me, George A. Young, a notary public in and for the said City and County of San Francisco, personally appeared Mollie Conklin and Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument and they severally duly acknowledge to me that they executed the same, and the said Edward A. Reddy and Emily M. Reddy further acknowledged they executed the said instrument respectively as administrator and administratrix.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my seal the day and year first above written.

[Seal]

GEORGE A. YOUNG,

Notary Public in and for the City and County of San Francisco, State of California.

—and the above instrument is recorded in the records and in the County Recorder's office of the County of Boise, at Idaho City, in the State of Idaho, in Book of Powers of Attorney, Number Two, [20] at page 338.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, Administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick Reddy, deceased, on the 27th day of September, 1900, wherein one R. M. Cobban, who is the defendant mentioned herein, is named as attorney in fact, and purporting, also, to have been acknowledged on the 27th day of September, one thousand nine hundred, before one Holland Smith, a notary public, in and for the City and County of San Francisco, State of California, in said City and County of San Francisco, and bearing the signature and official seal of said notary public, and which is written in the records of the said County of Boise, Idaho, in Book of Powers of Attorney, Number two at page 305.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the estate of Patrick

Reddy, deceased, on the first day of March, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting to have been acknowledged before one George A. Young, a notary public in and for the City and County of San Francisco, State of California, in said City and County of San Francisco, on the first day of March, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said County of Boise, Idaho, in Book of Powers of Attorney, Number two, at page 342.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, [21] Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the twenty-sixth day of September, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before one Holland Smith, a notary public in and for the City and County of San Francisco, in the City and County of San Francisco, on the twenty-sixth day of September, 1900, and bearing the official seal of said Notary, and which is written in the records of Boise County, Idaho, in Book of Powers of Attorney Number two at page 351.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick

Reddy, deceased, on the 13th day of February, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact purporting, also, to have been acknowledged before one George A. Young, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 12th day of February, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, at page 353.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administrator of the Estate of Patrick Reddy, deceased, on the 3d day of April, 1901, wherein [22] one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, on the 3d day of April, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorneys, Number two, at page 355.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 26th day of September, 1900,

wherein R. M. Cobban, who is a defendant herein, is named as attorney in fact purporting also to have been acknowledged before Holland Smith, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 26th day of September, 1900, and bearing the signature and official seal of said notary, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, page 349.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the Estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 28th day of February, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public, in and for the City and County of San Francisco, California, in said City and County, on [23] the 28th day of February, 1901, and bearing the signature and official seal of said notary public, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney Number two, at page 384.

Also an alleged instrument of like tenor and wording, wherein it purports to have been executed by Mollie Conklin, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 28th day of June, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in

fact, purporting to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 28th day of June, 1901, and bearing the signature and official seal of said notary public and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number two, at page 386.

Also an alleged instrument, wherein it purports to have been executed by Mollie Conklin, and Emily M. Reddy, as sole administratrix of the Estate of Patrick Reddy, deceased, on the 16th day of September, 1901, wherein one R. M. Cobban, who is a defendant herein, is named as attorney in fact, purporting also to have been acknowledged before Thomas S. Burnes, a notary public in and for the City and County of San Francisco, California, in said City and County, on the 16th day of September, 1901, and bearing the signature and official seal of said notary, and which is written in the records of said Boise County, Idaho, in Book of Powers of Attorney, Number three, at page 31.

XVIII.

That complainant does not know, and never did know, and never has seen or spoken to said R. M. Cobban, never did have any faith, trust or confidence in him, never received anything of value by way of consideration, or otherwise, from him, or from [24] anyone on his behalf, and never did knowingly sign, or authorize any person for her to sign, said alleged powers of attorney in paragraph XVII mentioned, or any of them; that complainant never knowingly,

or consenting, thereto gave a power or powers of attorney, revocable, or irrevocable, or at all, to said R. M. Cobban, or to any other person or persons, whatever to sell, or to transfer or to dispose of, or to exchange, or otherwise to deal in or deal with, said lieu lands, or any thereof; that said alleged powers of attorney were and are wholly without consideration; that complainant never acknowledged said alleged powers of attorney, or any of them, never appeared, in person, or by proxy, or otherwise, or at all, before the notaries public, or any of them, who appear, in said certificates of acknowledgments purporting to be annexed to said alleged powers of attorney, to have taken her acknowledgment thereto, and never authorized any other person so to appear for her; that said writings, purporting to be certificates of acknowledgments of said alleged powers, and purporting to be signed by the notaries therein named, are, and each of said certificates is, wholly and unqualifiedly and absolutely false and untrue; that they were, and each of them was, made wholly without complainant's knowledge or consent and that said alleged powers of attorney are false and forged.

XIX.

That no administration upon any estate of said Patrick Reddy, deceased, was ever had in the State of Idaho, which the said Joseph C. Campbell, John A. Benson, and defendants, R. M. Cobban, E. B. Weirick, Henry Turrish, said unknown promoting stockholders and Payette Lumber & Manufacturing Company, well knew at all the times herein men-

tioned; and they and each of them, at all of said times, also well knew, and it is a fact, that neither said Emily M. Reddy, as administratrix, and said Edward A. Reddy, as [25] administrator, to appear, in said alleged powers to have executed the same, ever had any power or authority whatever, to make said alleged powers of attorney, or any of them, or to appoint said R. M. Cobban, or any other person, or persons, their, or either of their attorneys, or attorney in fact, in their representative capacity aforesaid, to sell, exchange, transfer, or dispose of or deal with said lieu land, or any part or interest therein, or for any other purpose whatever.

XVI.

That, on the 21st day of September, 1901, said R. M. Cobban, made, executed, acknowledged and delivered a writing wherein he, as alleged attorney in fact for complainant, and, also for said Edward A. Reddy, as administrator, and said Emily M. Reddy, as administratrix of said Estate of Patrick Reddy, deceased, purported to grant and convey a portion of said lieu lands, in paragraph VII mentioned, and which lands are described in the following alleged conveyance to defendant E. B. Weirick, as trustee; that said alleged conveyance, and the certificate of acknowledgment thereof, are in words and figures as follows:

THIS INDENTURE made the 21st day of September in the year of our Lord one thousand nine hundred and one, between Mollie Conklin, a widow, of Bakersfield, County of Kern, State of California, and Edward A. Reddy administrator, and Emily M.

Reddy, administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, State of California, by their attorney in fact, R. M. Cobban, of Missoula, County of Missoula, State of Montana the parties of the first part, and E. B. Weirick, trustee, of Butte, County of Silver Bow, State of Montana, the party of the second part.

WITNESSETH; That the said parties of the first part for and in consideration of the sum of one dollar (\$1.00) lawful money [26] of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part and to their heirs and assigns forever, all the following described real estate, situate in the County of Boise, State of Idaho, to wit: NE. $\frac{1}{4}$ of the SE. $\frac{1}{4}$ SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ and lot 4 of sec. 19, tp. 13 N. R. 5 E., and lot 11, sec. 2, tp. 11 N., R. 3 E.; NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of sec. 26, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, the northwest $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of sec. 17, the NW. $\frac{1}{4}$, the N. $\frac{1}{2}$ of NE. $\frac{1}{4}$ of sec. 35, tp. 16 N., R. 4 E., SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of sec. 29, E. $\frac{1}{4}$ of NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ of sec. 31, tp. 16 N., R. 5 E., NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of sec. 7, tp. 13 N., R. 5 E., and the NW. $\frac{1}{4}$ of sec. 25, tp. 16 N., R., 4 E., Boise meridian.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property as well in law as in equity of the said parties of the first part.

To have and to hold all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part and to his heirs and assigns forever, and the said parties of the first part and their heirs the said premises in the quiet and peaceable possession of the said party of the *second* his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person [27] and persons whomsoever lawfully claiming, or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MOLLIE CONKLIN. [Seal]

By R. M. COBBAN,
Her Attorney in Fact.

EDWARD A. REDDY, [Seal]

Administrator of the Estate of Patrick Reddy,
Deceased.

By R. M. COBBAN,
His Attorney in Fact.

EMILY M. REDDY, [Seal]

Administratrix of the Estate of Patrick Reddy,
Deceased.

By R. M. COBBAN,
Her Attorney in Fact.

I. R. S. \$2.75.

Sept. 23, 1901.

R. M. C.

Signed, sealed and delivered in the presence of

C. W. WILLETT.

State of Idaho,

County of Boise,—ss.

On this 23d day of September, 1901, before me, John M. Haines, a Notary Public in and for the said county, personally appeared R. M. Cobban, known to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of Mollie Conklin and Edward A. Reddy, administrator, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, and acknowledged to me that he subscribed the name of Mollie Conklin, Edward A. Reddy and Emily M. Reddy as principals and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

JOHN M. HAINES,

Notary Public. [28]

—that said alleged conveyance and certificate of acknowledgment were by said Cobban filed for record in the office of the Recorder of Boise County, Idaho, on the 30th day of September, 1901, and were written in the records of said office in Book of Deeds, Records No. 22, at page 45, and still so remain written in said book.

XXII.

That thereafter, and during the year 1902, said

lieu lands were patented by the United States to complainant, Mollie Conklin, and said Emily M. Reddy, administratrix, and Edward A. Reddy, administrator; that at the time said alleged conveyance by said Cobban, purporting to be made by him as attorney in fact for complainant and said representatives of Patrick Reddy, deceased, was made and acknowledged by said Cobban and placed on the records of said Boise County, Idaho, so as aforesaid, neither complainant, nor said representatives, nor said Cobban had any title whatever to said lieu lands, and neither of them had more than an equity therein, as said Joseph C. Campbell, John A. Benson, R. M. Cobban, Henry Turrish, said unknown promoting stockholders, and E. B. Weirick, then and there well knew.

XXIII.

That, as complainant is informed and believes, and therefore alleges, said Cobban and said Weirick were mere agents and dummies of said Benson, Henry Turrish and said unknown promoting stockholders, and acting as, and were used as mere tools by said Benson, said Turrish and said promoting stockholders, and said Cobban and Weirick were used as a conduit by means whereof to effect the alleged transfer of said lieu lands to said Lumber Company, thereafter to be organized, on the one hand, and of the proceeds thereof to said Benson, on the other hand, in and about the business of said alleged conveyance of said lands by said Cobban [29] to said Weirick, trustee, and that said transaction was in substance and effect a deal between, and for the benefit of, said

Benson and said Payette Lumber and Manufacturing Company, to be thereafter organized; and that the said Payette Lumber and Manufacturing Company, thereafter to be organized, was the real party for whom said Weirick was acting as trustee, as aforesaid, and which Company was the purported beneficiary thereunder; and that said Cobban, said Henry Turrish, who was a promoting stockholder, and said unknown promoting stockholders of said company were but acting for and on behalf of said Payette Lumber and Manufacturing Company, beneficiary as aforesaid.

XXIV.

That complainant did not know that said alleged powers of attorney, or any of them, were in existence, or that said alleged conveyance to said Weirick, trustee, aforesaid, was in existence prior to the first day of January 1903; that complainant, immediately thereafter, and prior to the first day of May, 1903, repudiated said alleged powers of attorney and said conveyance; that the total number of acres of "base lands" which plaintiff made a verbal agreement, as aforesaid, to sell to said Benson was nine thousand six hundred (9,600); that plaintiff has received the sum of Two Thousand Seven Hundred and Fifty Dollars (\$2,750) in two payments, at the office of said Campbell, and which, she was informed and believed, were made for deeds which had been taken out of the agreed escrow; that complainant is ready, able, and willing to restore to said Benson and said Campbell everything of value that she has received from them, or either of them;

that she has not done so, or offered to do so, because said Campbell and said Benson have, by their acts herein [30] related, placed it beyond their power, or the power of either of them, to restore to complainant the position that she occupied in relation to said lands and to the title thereof prior to the said alleged conveyance of said lieu lands to said Weirick trustee; that she does not make such offer now, because it is still impossible for them, or either of them to do so, and, also, because neither said Campbell nor said Benson are indispensable parties to this action, and are not made parties, and to make them such would oust the jurisdiction, and also, because their rights, if they, or either of them have any, against complainant or to said lieu lands will not be affected by any decree or order herein.

That complainant has never received anything of value from any of the defendants in this action.

XXV.

That defendants, R. M. Cobban, E. B. Weirick, individually and, also, as trustee, Payette Lumber and Manufacturing Company, John Doe, Mary Doe, Richard Roe and Thomas Roe, and each of them, unjustly claim an interest or estate adverse to complainant in said lieu lands, in paragraph VII herein mentioned that none of said defendants has any rightful claim, right, title, or interest thereto or therein; on the contrary, that each and all of said claims are utterly without right; that said alleged powers of attorney and alleged conveyance to Weirick trustee, are invalid and fraudulent and forged and constitute a cloud upon complainant's title to

said lieu lands.

XXVI.

All which actings, doings and pretenses of said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of complainant in the premises; and that complainant is remediless in the premises, at and [31] by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, that justice may be done in the premises, complainant prays that defendants, and each of them, be required to set forth fully the nature of their claims to said real property, herein known as and called lieu lands; that defendants be forever barred and enjoined from all claim to any estate of freehold or of inheritance in said real property, and that complainant be decreed to be the owner thereof and entitled to the possession of the same; for a decree of this court adjudging said powers of attorney and said alleged deed to Weirick, trustee, null and of no effect; for the appointment of a commissioner by the court and that such commissioner be directed to make and execute to complainant a full and complete release, cancellation and annulment of said alleged powers of attorney and that they be declared false and forged and said alleged deed to Weirick, trustee, be cancelled and annulled; for a perpetual injunction restraining said defendants, their, and such of their agents, attorneys, servants and employees, from entering upon or taking possession of said lieu lands, or any part thereof, and

from cutting or removing timber therefrom, and from committing waste thereon, and, in the meantime, for a temporary injunction of like tenor and effect; and, to the end that complainant may obtain the relief to which she is justly entitled, in the premises, she now prays the court to grant her due process of subpoena directed to the said R. M. Cobban, E. B. Weirick, individually, and, also as trustee, Payette Lumber and Manufacturing Company, a corporation John Doe, Mary Doe, Richard Roe, Thomas Roe, defendants hereinbefore named, requiring and commanding each of them to appear herein and answer, but not under oath, the same [32] being expressly waived, the several allegations in this, complainant's bill contained, and if said defendants should not come within the jurisdiction of this court, that such proceedings may be had in regard to them, by publication, or otherwise, to conclude them in the premises as may be authorized by, and be according to the form of the statutes in such case made and provided; and for such other and further relief as may be just and according to equity, according to the nature of the case; and complainant, as in duty bound, will ever pray.

WM. B. DAVIDSON,

N. E. CONKLIN,

Solicitors for Complainant. [33]

State of California,

County of Los Angeles,—ss.

Mollie Conklin, first being duly sworn, deposes and says: That she is the complainant in the above-en-

titled action; that she has read the foregoing Complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated on information and belief, and as to those matters that she believes it to be true.

MOLLIE CONKLIN.

Subscribed and sworn to before me this 6th day of April, A. D. 1908.

[Seal]

P. J. CHRIST,

Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires Sept. 13th, 1910.

Service of copy admitted April 13th, 1908.

CAVANAUGH & BLAKE.

[Endorsed]: Filed April 15, 1908. A. L. Richardson, Clerk. [34]

*In the Circuit Court of the United States for the
District of Idaho, in the Ninth Judicial Circuit,
Central Division.*

IN EQUITY—CONSOLIDATED No. 60.

THE UNITED STATES OF AMERICA and
MOLLIE CONKLIN,

Complainant,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, a Corporation, et al.,
Defendants.

**Separate Amended Answer of Defendant Payette
Lumber and Manufacturing Company.**

SEPARATE AMENDED ANSWER OF THE
DEFENDANT PAYETTE LUMBER &
MANUFACTURING COMPANY TO THE
AMENDED BILL OF COMPLAINT OF
COMPLAINANT MOLLIE CONKLIN.

COMES NOW the above-named defendant, Payette Lumber & Manufacturing Company, a corporation, and for itself only, now and at all times hereafter saving to itself all and all manner of benefits and advantages of exceptions, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in said amended bill of complaint of complainant, Mollie Conklin, contained for amended answer thereto, or so much thereof that this answer defendant is advised it is material or necessary for it to make answer to, says, as follows:

I.

As to whether complainant, Mollie Conklin, is domiciled in and is a resident of the State of California, and of the City and County of San Francisco, in said State of California, and that she was the wife and is the widow of A. R. Conklin, who is dead, this answering defendant has no knowledge or information upon which to base a belief regarding the same and therefore denies the same. [35]

II.

Admits the allegations of paragraphs two, three and four of complainant, Mollie Conklin's amended bill of complaint.

III.

That as to whether John Doe is a citizen of the State of Montana, that the defendant Mary Doe, Richard Roe and Thomas Roe are citizens of the State of Minnesota, and that complainant, Mollie Conklin, does not know and is unable to ascertain the true names of the said defendants, John Doe, Mary Doe, Richard Roe and Thomas Roe, etc., as alleged in paragraph five of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no information or knowledge sufficient to form a belief thereon and denies the same.

IV.

This answering defendant admits that the value of the lands in controversy, herein set forth and described in complainant Mollie Conklin's amended bill of complaint, is largely in excess of \$5,000.00, and admits that the undivided one-half interest in controversy herein between complainant Mollie Conklin and this answering defendant is in excess of \$5,000.00.

V.

This answering defendant denies that complainant Mollie Conklin is the owner in fee as a tenant in common, or otherwise, of an undivided one-half, or any other interest, in the lands set forth and described in paragraph seven of complainant Mollie Conklin's amended bill of complaint, or any part thereof, or that she has any interest whatever therein. Denies that she is entitled to the immediate possession of said lands or the whole or any part thereof, or that she is entitled to the possession of said lands or the whole or any part thereof. Admits that said

lands are not in the possession [36] of the complainant Mollie Conklin, but denies that they are not in the possession of this answering defendant, and alleges the fact to be that said and all of said lands are in the possession of this answering defendant as hereinafter alleged. Admits that said lands are wild and uncultivated timber lands, but denies that they are vacant or unoccupied and not in the possession of any person. Admits that said lands are situated in the State of Idaho, United States of America, County of Boise, in said State, as described in paragraph seven of complainant Mollie Conklin's bill of complaint.

VI.

That as to whether Joseph Campbell is a citizen and resident of the State of California, and that he is an attorney at law, and has been practicing law for more than twenty years last past in the courts of the State of California, and as to all other allegations contained in paragraph eight of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief thereon, and therefore denies each and every of said allegations on that ground.

VII.

This answering defendant admits that the lands described as "base lands" in complainant Mollie Conklin's amended bill of complaint were situated in the State of California, and prior to the month of June, 1900, were covered by and included in a public forest reservation under the laws of the United States, but as to whether complainant Mollie Conk-

lin was the owner in fee of an undivided one-half interest in said "base lands" which have been formerly owned by complainant [37] Mollie Conklin's husband, as alleged in paragraph eight, and was in the year 1900, or at any other time, entitled to the possession of said lands, or any part thereof, or that complainant Mollie Conklin's husband died testate, this answering defendant has no knowledge or information sufficient to base a belief thereon and therefore denies the same. This answering defendant admits that the "base lands" referred to in complainant Mollie Conklin's amended bill of complaint are situated in the State of California, and are described and set forth in paragraph nine of complainant Mollie Conklin's amended bill of complaint, but as to whether complainant Mollie Conklin was, in the year 1900, or at any other time, the owner in fee, or otherwise, of any base lands at all, situated in the State of California, or elsewhere, this answering defendant has no knowledge or information sufficient to base a belief thereon, and therefore denies the same.

VIII.

As to whether during the year 1900 John A. Benson mentioned in paragraph ten of complainant Mollie Conklin's amended bill of complaint was, and for many years immediately preceding the year 1900, continuously, or otherwise, has been a client and intimate personal friend of the said Joseph C. Campbell, and as to the allegations in said paragraph ten of complainant Mollie Conklin's amended bill this answering defendant has no knowledge or information

upon which to base a belief regarding the same and therefore denies the same.

IX.

This answering defendant denies that during the month of August, 1900, or at any other time, that certain [38] or any promoting or any other kind of stockholders of the thereafter incorporated company, to wit, The Payette Lumber & Manufacturing Company, or anyone connected with the Payette Lumber & Manufacturing Company, either as stockholders or otherwise, did wrongfully and unlawfully or wrongfully or unlawfully agree, conspire and confederate together, or agree or conspire or confederate together, or otherwise, by means of artifice and deceit, or artifice or deceit, or otherwise, to induce complainant Mollie Conklin to surrender said or any base lands to the United States, or to select under the laws of the United States, or otherwise, other or any lands called lieu or any other kind of lands, in lieu or otherwise of said base or any other kind of lands, or to cheat and defraud or cheat or defraud complainant Mollie Conklin, or anyone else out of such lieu or any other kind of lands which had been so selected at any other time, or out of the title, right of possession, or proceeds thereof, or any part thereof, or to sell said or any lieu lands to themselves or to anyone else, and unlawfully or otherwise deprive the complainant, Mollie Conklin, of the use, possession and enjoyment, or the use, possession or enjoyment of the said lieu or any other kind of lands, or of the proceeds or any part thereof, or to convert the same or any part of the same to their

own use or to the use of any of them or at all.

As to whether during the month of August, 1900, or at any other time in the office of and in the presence and hearing of the said Joseph C. Campbell, in the City of San Francisco, it was orally agreed between the said [39] John A. Benson on his own behalf, and the said complainant Mollie Conklin, and the said Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, through their attorney, the said Joseph C. Campbell, that the said Benson should purchase for the said complainant Mollie Conklin and the said administratrix should sell to him the base lands mentioned in paragraph 9 of complainant Mollie Conklin's amended bill of complaint, and as to all the remaining allegations of paragraph 11 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information upon which to base a belief regarding the same, and therefore denies the same.

As to whether Joseph C. Campbell, John A. Benson, defendant R. M. Cobban, defendant E. B. Weirick, and other persons whose names are unknown, did wrongfully and unlawfully agree and did conspire and confederate together by means of artifice and deceit to induce complainant Mollie Conklin, to surrender base or any other lands to the United States, and to select lands under the laws of the United States, lands in lieu of said base lands, and to cheat and defraud complainant Mollie Conklin out of such lieu or any lands when such lieu or any lands should have been selected, or that said last

named persons did conspire to cheat and defraud said complainant Mollie Conklin out of the title, right of possession, or the proceeds of any part thereof, or to sell said lieu or any lands to themselves and unlawfully or otherwise to deprive complainant Mollie Conklin of the use, possession or enjoyment of said lieu or any lands or the proceeds or any part thereof to their own use or to the use of any of them, this answering defendant has no knowledge or information sufficient to base a [40] belief regarding the same, and therefore denies the same.

X.

As to the allegations of paragraph 12 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same.

XI.

As to the allegations of paragraph 13, except as to the allegation that complainant Mollie Conklin placed her signature at the bottom of certain deeds, conveying the base lands referred to in paragraph 9 of complainant Mollie Conklin's amended bill of complaint, which this answering defendant admits, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of said allegations.

XII.

As to all the allegations contained in paragraph 14 of complainant Mollie Conklin's amended bill of

complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same and therefore denies the same.

XIII.

As to the allegations of paragraph 15 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of them.

XIV.

As to whether neither Campbell or Benson, nor any other person, ever informed complainant Mollie Conklin that she had signed deeds to the base lands mentioned in paragraph [41] 9, etc., and as to all the allegations in paragraph 16 of complainant Mollie Conklin's amended bill of complaint, except as to the allegations that certain powers of attorney were placed on record in the recorder's office of Boise County, Idaho, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same.

XV.

This answering defendant admits the allegations of paragraph 17, except as to the allegation that the powers of attorney, referred to were alleged powers of attorney, which this answering defendant denies.

XVI.

This answering defendant has no knowledge or information as to whether complainant Mollie Conklin has ever seen or spoken to R. M. Cobban, etc., as alleged in paragraph 18 of complainant Mollie Conk-

lin's amended bill of complaint, and as to that and all other allegations in said paragraph 18, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies each and every of said allegations.

XVII.

This answering defendant admits that there was no administration upon any estate of the said Patrick Reddy in the State of Idaho, but denies that any of its promoting stockholders or anyone interested or connected with it in any way ever had knowledge that no administration had been had upon the estate of Patrick Reddy, deceased, in the State of Idaho, prior to the year 1903, but as to whether Joseph C. Campbell, John A. Benson, and defendants R. M. Cobban and E. B. Weirick, ever knew of such [42] fact, this answering defendant has no knowledge sufficient to base a belief regarding the same, and therefore denies the same. This answering defendant denies that it is a fact that the unknown or any other kind of promoting stockholders of this answering defendant or anyone connected with this answering defendant, knew that it was a fact that neither the said Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, nor Edward A. Reddy, as administrator, who appear in the powers of attorney to make said powers of attorney, or any of them, or to appoint R. M. Cobban, or any other person or persons, their or either of their attorneys or attorney in fact, in their representative capacity to sell, exchange, transfer, dispose of or deal with said lieu land, or any part or interest therein, or for

any other purpose whatever, but alleges the fact to be that the said Emily M. Reddy, as administratrix, or the said Edward A. Reddy, as administrator, had full power and authority and were fully competent to execute all of said powers of attorney in their representative capacity to sell, exchange, transfer, dispose of and deal with said lieu lands, and every part and parcel thereof.

XVIII.

This answering defendant admits that on the 21st day of September, 1901, R. M. Cobban made, executed, acknowledged and delivered a writing wherein he was attorney in fact for the complainant Mollie Conklin, and also Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator of the Estate of Patrick Reddy, deceased, conveying a portion of the lieu lands described in paragraph seven of complainant Mollie Conklin's amended bill of complaint to the defendant E. B. Weirick, as trustee, and that said conveyance, together with a [43] certificate of acknowledgment thereof, were in words and figures set forth in paragraph 21 of the bill of *complaint, Mollie Conklin*.

XIX.

This answering defendant denies that the said Cobban or the said Weirick were mere or any other kind of agents and dummies, or agents or dummies, of the said Benson or Henry Turrish, or said or any known or unknown or any other kind of promoting stockholders of this answering defendant, or acting as or were used as mere or any other kind of tools by said Benson or Turrish or said or any promoting stock-

holder or stockholders of this answering defendant, or that said Cobban or Weirick were used as a conduit or otherwise by means whereof or otherwise to affect the alleged or any transfer of said or any lieu lands to this answering defendant thereafter to be organized on the one hand, and of the proceeds thereof to the said Benson on the other or any hand, or otherwise or at all in or about the business of said alleged or any conveyance of said or any lands by said Cobban to the said Weirick, trustee. Denies that said or any transaction was in substance or otherwise of effect, or otherwise, a deal between or for the benefit of, or otherwise, of the said Benson or the Payette Lumber & Manufacturing Company, to be thereafter organized or for either of them or for anyone else. Denies that the said Payette Lumber & Manufacturing Company thereafter to be organized was the real or any other kind of party for whom the said Weirick was acting as trustee or otherwise. Denies that the said Cobban and the said Turkish, or either of them, or any known or unknown, or any other kind of promoting stockholder or stockholders of this answering defendant were acting for and on behalf or for or on behalf of this answering defendant as a [44] beneficiary or otherwise.

XX.

As to whether complainant Mollie Conklin did not know that the powers of attorney or any of them referred to in complainant Mollie Conklin's amended bill of complaint, as having been executed to R. M. Cobban, were in existence or that the conveyance to Weirick, trustee, was in existence prior to the first

day of January, 1903, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, except what appears from the records of the recorder's office of Boise County, Idaho, and therefore denies the same. As to whether complainant Mollie Conklin immediately after January, 1903, and prior to the first day of May, 1903, repudiated the said powers of attorney or any of them, and said conveyance to E. B. Weirick, trustee, referred to in paragraph 21 of complainant Mollie Conklin's amended bill of complaint, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same. As to whether complainant Mollie Conklin is ready, able and willing to restore to the said Benson and Campbell, or either of them, everything or anything of value that she has received from them, or either of them, this answering defendant has no knowledge or information sufficient to base a belief regarding the same, and therefore denies the same. As to whether complainant Mollie Conklin has ever received anything of value from any of the defendants in this action, this answering defendant has no knowledge or information regarding the same and therefore denies the same, except as to that part of the allegation relating to this answering defendant. [45]

XXI.

This answering defendant admits that it claims an interest or estate adverse to complainant in the lieu lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint. Denies

that it unjustly claims an interest or estate adverse to complainant Mollie Conklin in said lieu lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint. Denies that the claim of this answering defendant to the lieu lands referred to in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, or any part thereof, or any interest therein, is without right, title or interest thereto. Denies that the powers of attorney referred to in complainant Mollie Conklin's amended bill of complaint, and the conveyance to the said Weirick, trustee, referred to therein, or either of them, are invalid and fraudulent, or that they constitute a cloud upon complainant Mollie Conklin's title to the said lieu lands, or any part thereof. But this answering defendant alleges the fact to be that it is the sole and exclusive owner of the entire property set forth and described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, and every part and parcel thereof.

This answering defendant, further answering complainant Mollie Conklin's amended bill of complaint, avers:

I.

That on or about the 19th day of May, 1903, this answering defendant purchased from E. B. Weirick, trustee of Butte, Montana, the lands set forth and described in paragraph 7, of complainant Mollie Conklin's amended [46] bill of complaint (together with other lands), paying therefor a good and valuable consideration, to wit: the sum of \$8.55 $\frac{1}{4}$ per acre, being the full value thereof according to

the market price of such lands in the vicinity of their location, which payment was made in lawful money of the United States, and was accepted by the said E. B. Weirick, trustee, as payment in full for said lands.

That the said E. B. Weirick, trustee, conveyed said lands to this answering defendant by warranty deed, dated May 19th, 1903, which said deed was duly acknowledged by the said E. B. Weirick, trustee, on the 22d day of May, 1903, and thereafter on the 25th day of May, 1903, was delivered to this answering defendant, a copy of which said deed (abbreviated only as to descriptions) is hereto attached, marked Exhibit "A," and made a part hereof.

That this answering defendant was, at the time of the purchase of the lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint, an innocent purchaser of said lands for a valuable consideration, and had no information or knowledge of any fact or facts which would lead it or its agents or officers to believe that the title of any of said lands was in question.

That up to and including the time of the purchase of the said lands and the delivery of the deed therefor this answering defendant had no notice or knowledge, directly or indirectly, of any fraud upon the part of any person or persons in the acquisition of the title to said lands, or any part thereof; nor did this answering defendant have any notice or knowledge whatever that said lands or any part thereof were acquired in any other than in the usual, legitimate and lawful [47] manner that lands of any

other character are acquired; nor did it have any notice or knowledge that entry upon said lands was made in any other than in a legal and legitimate manner; but this answering defendant was a *bona fide* purchaser of the said lands in good faith and for a valuable consideration as hereinbefore stated.

II.

That at the time of the purchase of the lands described in paragraph 7 of complainant Mollie Conklin's amended bill of complaint by this answering defendant, and at the time of the delivery to this answering defendant of the deed therefor, the grantor named in said deed, to wit, E. B. Weirick, trustee, was seized in fee, in the possession of and entitled to the possession of all of the lands described in said paragraph 7.

III.

That during the year 1900, being the time complainant Mollie Conklin alleges in paragraph II of her amended bill of complaint that Joseph C. Campbell and John Benson, defendant R. M. Cobban and defendant E. B. Weirick, and certain promoting stockholders of the Payette Lumber & Manufacturing Company, one of which said stockholders was Henry Turrish, afterwards vice-president of the Payette Lumber & Manufacturing Company, and other persons unknown, wrongfully and unlawfully agreed, conspired and confederated together to induce complainant Mollie Conklin, to surrender the base lands, referred to in her amended bill of complaint, to the United States, there was no one promoting the incorporation of this answering defend-

ant, and this answering defendant was not incorporated until January, 1903, when it was first duly authorized to do business within the State of Idaho.
[48]

IV.

And this defendant denies all and all manner of unlawful combination or confederacy wherewith it is by said bill charged; without this there is no other matter, cause or thing in said complainant Mollie Conklin's amended bill of complaint contained material or necessary for this answering defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this answering defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges on its behalf most wrongfully sustained.

WHEREFORE this answering defendant prays:

1. That complainant Mollie Conklin's amended bill of complaint be dismissed and that she take nothing by her suit.

2. For costs of suit.

CAVANAH & BLAKE,

Solicitors and of Counsel for Defendant The Payette
Lumber & Manufacturing Company, Pioneer
Bldg., Boise, Idaho.

State of Idaho,

County of Ada,—ss.

E. M. Hoover, being first duly sworn, on oath deposes and says: That he is the general manager of

the Payette Lumber & Manufacturing Company, one of the defendants in the above-entitled action; that he has read the foregoing answer, knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information or belief, and as to those matters he believes it to be true.

E. M. HOOVER.

Subscribed and sworn to before me this 30th day of April, 1909.

[Seal]

JOHN J. BLAKE,

Notary Public. [49]

EXHIBIT "A."

THIS INDENTURE, Made this 19th day of May, in the year of Our Lord One Thousand Nine Hundred Three, by and between E. B. Weirick, Trustee, of Butte, Montana, the party of the first part, and the Payette Lumber and Manufacturing Company, a corporation duly organized and existing under and by reason of the laws of the State of Minnesota, the party of the second part.

WITNESSETH, That the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the party of the second part, the receipt of which is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, forever, all the following described real estate, situate in Boise County, State of Idaho, as follows, to wit:

The following tracts patented by the United States Government to Nathaniel B. Frisbie:

Patent Number 4531.

S. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. 8, T. 12 N., R. 4 E.

Patent #4532.

SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 8; NE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 7, T. 12 N., R. 4 E.

Patent #4533.

SE. $\frac{1}{4}$ S. 8, T. 12 N., R. 4 E.

The following tracts patented by the United States Government to C. E. Glover:

Patent #4542.

NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

Patent #4731.

Lot 1, S. 18, T. 13 N., R. 5 E.

Patent #4538.

SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 1, T. 12 N., R. 5 E.

Patent #4541.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E. [50]

The following tracts patented by the United States Government to F. A. Hyde & Co.:

Patent# 4522.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. 23, T. 11 N., R. 3 E.

Patent #4515.

NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 33; all of S. 28, T. 11 N., R. 3 E.

Patent #4524.

N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 24, T. 11 N., R. 3 E.

Patent #4521.

W. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 10, T. 11 N., R. 3 E.

The following tracts patented by the United States Government to Jacob Goldberg:

Patent #4526.

SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 22; SW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, lots 1, 2, S. 23; NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 14, T. 12 N., R. 3 E. Lot 3, S. 31, T. 13 N., R. 4 E.

Patent #4530.

Lot 9, S. 1, T. 12 N., R. 3 E.

Patent #4528.

Lot 5, S. 1, T. 12 N., R. 3 E.

Patent #4529.

Lot 8, S. 1, T. 12 N., R. 3 E.

Patent #4527.

Lot 4, S. 1, T. 12 N., R. 3 E.

The following tracts patented by the United States Government to Albert Meyer:

Patent #4534.

Lots 1, 2, 3, 4, 5, 6, 7, E. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 23; E. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$. Lots 1, 2, 3, 4, 5, S. 26. Lot 7, S. 10, T. 11 N., R. 3 E., SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

The following tracts patented by the United States Government to Hiram M. Hamilton:

Patent #4823.

SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 8; SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 13, T. 16 N., R. 4 E. [51]

Patent #4553.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 17, T. 12 N., R. 4 E.

Patent #4556.

NE. $\frac{1}{4}$, E. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. 22; S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 23, T. 16 N., R. 4 E.

Patent #4821.

SE. $\frac{1}{4}$ S. 18; W. $\frac{1}{2}$, S. 17; NE. $\frac{1}{4}$, S. 7, T. 13 N.,
R. 5 E.

Patent #4554.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 17; S. $\frac{1}{2}$ SE. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$,
S. 9, T. 12 N., R. 4 E.

Patent #4555.

SW. $\frac{1}{4}$ S. 9, T. 12 N., R. 4 E.

The following tracts patented by the United States
Government to W. W. Curtiss:

Patent #4633.

NW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, NE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S.
 $\frac{1}{2}$ NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 17; NE. $\frac{1}{4}$, E. $\frac{1}{2}$ NW.
 $\frac{1}{4}$, NE. $\frac{1}{4}$ SW. $\frac{1}{4}$, N. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SE, $\frac{1}{4}$, Lots
1, 2, 3, S. 19, T. 11 N., R. 4 E.; E. $\frac{1}{2}$ NE. $\frac{1}{4}$, NE. $\frac{1}{4}$
SE. $\frac{1}{4}$, S. 24; N. $\frac{1}{2}$ NW. $\frac{1}{4}$, SW. $\frac{1}{4}$, NW. $\frac{1}{4}$, W. $\frac{1}{2}$
SW. $\frac{1}{4}$, S. 25; E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$
SW. $\frac{1}{4}$, S. 26; NW. $\frac{1}{4}$, S. 35; SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ NE. $\frac{1}{4}$,
E. $\frac{1}{2}$ SW. $\frac{1}{4}$, S 34, T. 11 N., R. 3 E.

The following tracts patented by the United States
Government to Edward G. Frisbie:

Patent #4548.

W. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. 7, T. 12 N., 4 E.

Patent #4549.

SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.

Patent #4547.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.

Patent #4546.

E. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 18, T. 12 N., R. 4 E.

Patent #4545.

SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 13; SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, N. $\frac{1}{2}$ NW.

$\frac{1}{4}$, S. 24; SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 25, T. 13 N., R. 3 E.
 Lot 1, S. 12, T. 12 N., R. 3 E. Lot 1, S. 18, T. 12
 N., R. 4 E. [52]

The following tracts patented by the United States
 Government to Alfred Ruiz:

Patent #4551.

Lots 1, 2, S. 3; Lots 6, SW. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 2, T. 11
 N., R. 3 E. Lot 2, S. 31, T. 13 N., R. 4 E.

The following tracts patented by the United States
 Government to Mollie Conklin, Edward A. Reddy,
 Administrator, and Emily M. Reddy, Administra-
 trix of the *state* of Patrick Reddy:

Patent #4511.

E. $\frac{1}{2}$ SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 31; S. $\frac{1}{2}$ SE. $\frac{1}{4}$,
 S. 32, T. 16 N., R. 4 E.

Patent #4826.

S. $\frac{1}{2}$ SE. $\frac{1}{4}$, S. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 5,
 T. 15 N., R. 4 E.

Patent #4778.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 19, T. 13 N., R. 5 E.

Patent #4784.

SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 19, T. 13 N. R. 5 E.

Patent #4501.

W. $\frac{1}{2}$ SE. $\frac{1}{4}$, E. $\frac{1}{2}$ SW. $\frac{1}{4}$, Lots 3, 4, S. 19, T. 15
 N., R. 4 E.; SE. $\frac{1}{4}$, E. $\frac{1}{2}$, NE. $\frac{1}{4}$, S. 25, T. 15 N., R. 3
 E. Lots 1, 4, S. 34, T. 12 N., R. 3 E.

Patent #4780.

NE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 7, T. 13 N., R. 5 E.

Patent #4785.

SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 29, T. 16 N., R. 5 E.

Patent #4773.

SE. $\frac{1}{4}$ NW. $\frac{1}{4}$, S. 7, T. 13 N., R. 5 E.

Patent #4775.

NW. $\frac{1}{4}$ S. 25, T. 16 N., R. 4 E.

Patent #4777.

S. $\frac{1}{2}$ SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 26, T. 16 N., R. 4 E.

Patent #4776.

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 26, T. 16 N., R. 4 E. [53]

Patent #4510.

Lot 1, S. 6, T. 15 N., R. 4 E.

Patent #4509.

Lot 2, S. 6, T. 15 N., R. 4 E.

Patent #4508.

Lot 3, S. 5, T. 15 N., R. 4 E.

Patent #4502.

Lot 4, S. 5, T. 15 N., R. 4 E.

Patent #4503.

Lot 2, S. 5, T. 15 N., R. 4 E.

Patent #4507.

SE. $\frac{1}{4}$ NE $\frac{1}{4}$, S. 29, T. 16 N., R. 4 E. Lot 4, S. $\frac{1}{2}$ NW. $\frac{1}{4}$, S. 4, T. 15 N., R. 4 E.

Patent #4513.

SE. $\frac{1}{4}$ NE. $\frac{1}{4}$, S. 31, SW. $\frac{1}{4}$ S. 32, T. 16 N., R. 4 E.

Patent #4512.

SW. $\frac{1}{4}$ S. 28, T. 16 N., R. 4 E.

Patent #4514.

SE $\frac{1}{4}$, E. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 26, T. 13 N., R. 3 E. Lot 1, SE. $\frac{1}{4}$ NE $\frac{1}{4}$, S. 2; W. $\frac{1}{2}$ SW. $\frac{1}{4}$, S. 1, T. 12 N., R. 3 E. N. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 29; NE. $\frac{1}{4}$, SE. $\frac{1}{4}$, S. 31; W. $\frac{1}{2}$ SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ SW. $\frac{1}{4}$, S. 32, T. 15 N., R. 4 E.

Patent #4774.

N. $\frac{1}{2}$ NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, N. $\frac{1}{2}$ SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ SE. $\frac{1}{4}$, S. 17; NW. $\frac{1}{4}$, N. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 35, T. 16 N., R. 4 E.

Also land purchased of Arthur M. Thomas, not yet patented, but approved by the Commissioner of the General Land Office, being Lieu Land Selection. And being

Patent #4631.

SE. $\frac{1}{4}$, S. $\frac{1}{2}$ NE. $\frac{1}{4}$, S. 6, T. 15 N., R. 4 E. [54]

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to said property, as well in law as in equity, of the said party of the first part,

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and its successors and assigns, forever. And the said party of the first part, and his heirs and assigns, and the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part, and his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, I, said E. B. Weir- ick, Trustee, being so first authorized, empowered and directed by each and every one of the parties for

whom said trust is held, have hereunto set my hand and seal the day and year first above written.

E. B. WEIRICK,
Trustee.

State of Montana,
County of Silver Bow,—ss.

On this 22d day of May, in the year of 1903, before me John S. Dutton, a Notary Public in and for said County and State, personally appeared E. B. Weirick, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same by the authority of and at the direction and request of the persons for whom said trust was by him held.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[Seal] JOHN S. DUTTON,
Notary Public in and for County of Silver Bow,
Montana.

My commission expires December, A. D. 1905.

Service of above and foregoing Amended Answer together with a copy accepted May 1st, 1909.

WM. B. DAVIDSON,
Of Counsel for Mollie Conklin.

[Endorsed]: Filed May 1, 1909. A. L. Richardson, Clerk. [55]

[**Replication of Mollie Conklin to Answer of Payette
Lumber & Mfg. Co.**]

*In the Circuit Court of the United States for the Dis-
trict of Idaho, in the Ninth Judicial Circuit.*

IN EQUITY—CONSOLIDATED NO. 60.

THE UNITED STATES OF AMERICA and MOL-
LIE CONKLIN,

Complainants,

vs.

PAYETTE LUMBER AND MANUFACTURING
COMPANY, a Corporation, et al.,
Defendants.

This replicant, Mollie Conklin, saving and reserv-
ing to herself all and all manner of advantages of ex-
ceptions which may be had and taken to the manifold
errors, uncertainties and insufficiencies of the answer
of the defendant Payette Lumber & Manufacturing
Company, a corporation, for replication thereunto
saith: That she does and will aver, maintain and
prove her said bill to be true, certain and sufficient in
the law to be answered unto by the said defendants;
and that the answer of the said defendant is very un-
certain, evasive and insufficient in law to be replied
thereunto by this replicant; without that, that any
other matter or thing in the said answer contains ma-
terial, or effectual in the law to be replied unto,
and not herein and hereby well and sufficiently replied
unto, confessed or avoided, traversed or denied is true
all which matter and thing this replicant is ready to
aver, maintain and prove as this Honorable Court

shall direct and humbly pray as in and by her said bill she has already prayed.

N. E. CONKLIN

Residence Berkeley, Cal., [56]

WM. B. DAVIDSON,

Boise, Idaho.

Solicitors and of Counsel for Complainant, Mollie Conklin.

Service of the above and foregoing replication accepted this 1st day of June, A. D. 1909.

CAVANAUGH & BLAKE,

Solicitors for the Defendant Payette Lumber & Manufacturing Co.

[Endorsed] : Filed June 1, 1909. A. L. Richardson, Clerk. [57]

In the Circuit Court of the United States, District of Idaho, for the Ninth Judicial District, Central Division.

MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually, and also as Trustee, PAYETTE LUMBER AND MANUFACTURING COMPANY, a Corporation, JOHN DOE, MARY DOE, RICHARD ROE, and THOMAS ROE,

Defendants.

Answer of Defendants R. M. Cobban and E. B. Weirick.

ANSWER OF THE DEFENDANTS R. M. COBBAN, E. B. WEIRICK, PERSONALLY, AND E. B. WEIRICK, TRUSTEE, TO COMPLAINANT'S BILL OF COMPLAINT.

The defendants, R. M. Cobban, E. B. Weirick, personally, and E. B. Weirick, as trustee, reserving all manner of exceptions that may be had to the uncertainties and imperfections of complainant's bill of complaint, and answering thereto, or to so much thereof as they are advised is material to be answered, and say :

I.

As to paragraph one as to whether or not complainant is domiciled or is a citizen of the State of California, United States of America, or is a resident of the town of Berkeley, in said state last named, or that she was the wife or is the widow of A. R. Conklin, who is dead, these defendants have no knowledge, but believe that the same is true.

II.

Admit the allegations of paragraph numbered two of said bill of complaint. [58]

III.

Admit the allegations contained in paragraph three of said bill of complaint.

IV.

Admit the allegations of paragraph four of said bill of complaint so far as these defendants, or either of them, have any knowledge or information relative to

the correctness thereof.

V.

Deny that these defendants, or either of them have any knowledge or information as to the citizenship of any party or parties attempted to be designated or designated in said bill of complaint as John Doe, Mary Doe, Richard Roe or Thomas Roe.

VI.

These defendants admit that the value of the lands described in said bill of complaint is in excess of \$5,000.00, and that a one-half interest in the lands described in the said bill of complaint is of a value in excess of \$5,000.00.

VII.

1. In answer to paragraph seven these defendants deny that complainant is the owner in fee, or otherwise, of an undivided one-half interest or any interest in any lands described in said bill of complaint.

2. Deny that she is entitled to immediate, or any possession of said land, or any part or portion thereof.

3. Admit that the said complainant is not in possession of said lands, or any part thereof.

4. Admit that these answering defendants are not in possession of the said land, but, in this connection allege the facts to be, as these defendants are informed and believe, that Payette Lumber & Manufacturing Company is now, and at all times [59] subsequent to the purchase of the lands described in said bill of complaint, has been, the owner and in possession of said lands and all parts thereof.

5. Admit that the said lands are wild and un-

cultivated timber lands, and allege, on information and belief, that the said lands at the date hereof are in possession of the defendant Payette Lumber and Manufacturing Company, a corporation, one of the defendants in this action.

VIII.

In answer to paragraph eight of complainant's said bill these defendants deny that they, or either of them, have any knowledge or information relative to the alleged facts therein stated and require proof thereof.

IX.

1. Admit that the lands referred to as base lands were and are situated in the State of California, and were in the year 1900 included within the public forest reservation under the laws of the United States.

2. Admit that the complainant was the owner of an undivided one-half interest in said lands described in paragraph eight of said bill of complaint.

3. Deny having any information as to when Patrick Reddy died.

4. Admit, on information and belief, that in August, 1900, the estate of Patrick Reddy was in process of administration in the Superior Court of the City and County of San Francisco, State of California.

5. Admit that Emily M. Reddy and Edward A. Reddy were the then duly appointed, qualified and acting administratrix and administrator with will annexed of the said estate of the [60] said Patrick Reddy, deceased.

6. Admit that the base lands described in paragraph nine are situated in the State of California.

7. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief as to whether or not complainant was, at any time referred to in her bill of complaint, the owner in fee of a like right, or any right, title or interest in or to other base lands situated in the State of California than the lands specified in said bill of complaint, and therefore deny the same.

X.

1. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief, as to whether, prior to the year or during the year 1900, John A. Benson, referred to in said bill of complaint, had been or was at any time, a client or intimate personal friend or any friend of Joseph C. Campbell.

2. Admit that the said John A. Benson for many years last passed has been thoroughly learned in the laws of the United States respecting the acquisition of lands under the United States laws, and has been engaged in the business of the location, purchase, and sale of such lands in the State of California, Idaho, and elsewhere.

XI.

Deny that during the month of August, or at any time, or at all, these answering defendants, or either of them, and Joseph C. Campbell, John A. Benson, and certain promoting stockholders of the thereafter incorporated company, Payette Lumber and Manufacturing Company, and Henry Turrish, or any or either [61] of said parties, or other parties whose names are unknown to complainant, did wrongfully

or unlawfully agree or did conspire or confederate together to induce plaintiff by means of artifice or deceit, to surrender any base lands, or any lands, to the United States, or to select under the laws of the United States in that behalf, other lands, in lieu of any base lands, or otherwise, or did confederate, conspire or unlawfully agree, or agree at all by means of artifice or deceit, or otherwise, to cheat or defraud complainant out of any title, or any right, or any interest, or any right of possession, or of the proceeds of, any lands or other property.

2. Deny that these defendants, or either of them, either alone or associated with any person or persons whomsoever, in any manner, or at all, cheated or attempted to cheat, by means of artifice or otherwise, or at all, the complainant out of any right, or title, or interest, or claim, of any kind or character in or to any lands described or attempted to be described in said bill of complaint.

3. Deny that these defendants, or either of them, either alone, or associated with any person or persons whomsoever, conspired wrongfully and unlawfully to sell any lands described in said bill of complaint, or unlawfully or wrongfully deprived the complainant of the use, possession and enjoyment of any lands described in said complaint as lieu lands, or any other lands, or any proceeds thereof, or any part thereof, or converted the proceeds of such lands, or any lands, to their own use.

4. Deny that these defendants, or either of them, have any knowledge, or ever did have any knowledge, as to any alleged transaction in the office of, or in the

presence or hearing of, Joseph C. Campbell in the month of August, 1900, or at any other [62] time, wherein an oral agreement of any kind or character was entered into by and between the said John A. Benson and said complainant, or John A. Benson and complainant and Emily M. Reddy, as administratrix of the Estate of Patrick Reddy, deceased, or otherwise.

5. Deny that these defendants, or either of them, have any knowledge or information as to any agreement made by John A. Benson with complainant at any time, or at all, as to any property described in said complaint or in said paragraph eleven of said bill of complaint, wherein the said John A. Benson agreed to purchase from complainant, and the complainant agreed to sell to Benson the base lands described in paragraph IX of complainant's bill of complaint, or that Benson should pay therefor \$4.00 per acre, or that deeds therefor from complainant and the administratrix of the estate of the said Patrick Reddy, deceased, to the said John A. Benson should be made and placed in escrow, to be taken out of the escrowholder's hands by the said Benson as he paid for the said lands, or that the said Benson should pay therefor and complete payment for all of said base lands or take all of said deeds out of escrow within ninety days thereafter.

6. Deny that these answering defendants, or either of them, ever had any knowledge or information, or intimation of the existence of any such agreement prior to reading such averment in complainant's

amended bill of complaint during the month of October, 1909.

7. Deny having any knowledge or information as to whether Joseph C. Campbell represented to complainant that Benson was reliable, or trustworthy or fully able to carry out any promise made by him.
[63]

8. Deny having any knowledge or information as to any negotiations for a sale to Benson of any base lands, or who conducted such negotiations, if any were had.

9. Deny having any knowledge or information as to any deeds from complainant or from the Reddy Estate being placed in escrow for the benefit of Benson, or for the benefit of anyone else.

XII.

1. Deny having any knowledge or information as to whether or not complainant at any time had confidence in Joseph C. Campbell, or in any advice which he did or might give in relation to John A. Benson, or anyone else, or any confidence which he might have in John A. Benson to draw deeds of any base lands, or as to whether or not complainant did relieve or rely upon any promise of the said Benson to pay for any base lands the sum of \$4.00 per acre, or any sum of money whatsoever.

2. Deny having any knowledge or information as to any other allegation made by the said complainant in paragraph twelve of her amended bill of complaint.

XIII.

1. Deny having any knowledge or information as

to whether or not Benson was reliable or trustworthy or able to carry out any promise, or that he made any promise to the complainant as alleged in paragraph thirteen of complainant's amended complaint.

2. Deny that these defendants, or either of them, have any knowledge or information sufficient to form a belief, as to any act of the said Benson in drawing or pretending to draw, or causing to be drawn, any deed or deeds of any base lands purporting to convey said lands, or any part of said lands, from [64] complainant or any representative of the Reddy estate to the said Benson; and—

3. Deny that these defendants, or either of them, have any knowledge or information as to any alleged contract between Benson and the said Mollie Conklin, or as to any action of Campbell purporting to represent the complainant in this action.

4. Admit that on or about the month of August, 1900, deeds were prepared and signed by complainant and by the representatives of the Reddy Estate purporting to convey said base lands from complainant and the said representatives of the Reddy Estate to the United States of America.

5. Admit that the said Benson then delivered the said last mentioned prepared deeds to Campbell and that the said deeds were duly presented to complainant for execution and signature, and that complainant, having every opportunity to examine and inspect the same, did then place her signature at the bottom of the said deeds conveying and relinquishing the said base lands to the United States of America, and did then after such execution return to Joseph C. Camp-

bell for delivery to the said Benson the said deeds, who immediately caused the same to be placed on record in the respective counties in which said lands were situated, and that they then and there became public records in the office of the County Recorder of Tulare County, at Visalia, California, and in the office of the recorder in the County of Inyo, at Independence, California, and were open to the inspection of the complainant, or any other person or persons seeking information concerning the said property.

6. Deny on information and belief that either the said Benson or the said Campbell made any representations to the said complainant as to the contents of the said deeds other than that they were deeds relinquishing said lands as were described [65] therein to the Government of the United States.

XIV.

1. Admit that at the time complainant received said last mentioned deeds from said Campbell for signature, that the said Campbell also sent therewith, for complainant's signature, certain other papers, and admits that said papers, were sent to the complainant to be signed by her.

2. Deny that these defendants, or either of them, have any knowledge or information as to whether the said complainant examined any paper or papers sent to or signed by her.

3. Deny that these defendants, or either of them, have any knowledge or information as to any belief of the said complainant at the time of signing the papers sent to her.

XV.

These defendants admit, on information and belief, that among the papers prepared and sent to complainant and signed by her, were papers purporting on their face to be applications to select lieu lands in place of base lands, and papers purporting on their face to be powers of attorney in blank, and that the said powers of attorney did not at the time complainant signed same, contain the name of any person as attorney.

2. Admit that the name of R. M. Cobban was inserted in said power of attorney after complainant had signed the same.

3. Deny that such insertion of the name of R. M. Cobban was without the complainant's knowledge or consent, but, on the contrary, allege the facts to be, that the said powers of attorney were signed by the complainant, well knowing that the same were in blank, and that the name of R. M. Cobban, or some other person who might make the selection under the applications signed by her, would be inserted in said powers of attorney [66] for the purpose of completing the title to such lands, and for the purpose of selling the said lands to other parties.

4. Deny that the said powers of attorney did not contain any dates, but allege, to the contrary, that the said several powers of attorney each contained the date of their execution by complainant, which said powers of attorney authorized the attorney named therein to enter into and take possession of each and every tract of public lands in any State or territory of the United States, that has been, or may hereafter

be selected, by the party signing the power of attorney, in lieu of the land surrendered to the United States as aforesaid (which land was described in said several powers of attorney), or any portion thereof, “whether the said selections be made by us personally or by someone else, acting through power of attorney from us.” The said several powers of attorney also authorized the attorney to grant, bargain, sell and convey by good and sufficient deed all the right, title and interest of the party executing such power of attorney, which she might have, own, hold or possess, and all the right, title and interest that she might thereafter acquire in or to any land that might be selected as aforesaid, or any part thereof, for such price as to said attorney might seem proper, and to make, execute, acknowledge and deliver all necessary deeds, conveyances or assignments, or other instruments of whatever kind or nature, giving to the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as she might or could do if personally present; and reciting that “for value received, the receipt whereof is acknowledged,” the said several powers of attorney were made and [67] declared to be irrevocable, which said several powers of attorney were each duly executed by complainant and acknowledged before a notary public in the city and county of San Francisco, State of California.

5. Deny that said applications to select lieu lands in place of base lands sent to complainant, and that

the several powers of attorney in blank sent to complainant were sent to her surreptitiously, or in furtherance of any conspiracy or scheme to defraud, but, on the contrary, allege that the said powers of attorney were sent to complainant openly and honestly and with the intention and purpose of enabling the complainant to thus dispose of her lieu lands which should be selected in place of base lands which she had surrendered and relinquished to the Government of the United States.

XVI.

Deny that the complainant remained in ignorance as to the fact that she had signed deeds relinquishing to the Government of the United States the base lands described in paragraph nine of complainant's amended bill of complaint, or that she remained in ignorance of the fact that she had signed papers authorizing the selection of lieu lands in place of base lands, or that she remained in ignorance of the fact that she had signed irrevocable powers of attorney for the disposition and sale of such lieu lands, but, on the contrary, allege that at the time of signing said applications to select lieu lands and at the time of signing the said powers of attorney, she was fully advised of the character and nature and provisions of the papers and documents which she then and there signed.

2. Deny having any knowledge or information as to the other matters alleged in paragraph sixteen of said amended bill of complaint, and therefore deny the said several allegations therein made, as to complainant's knowledge and as to [68] representations made to her by other parties.

3. Deny that the said Campbell wilfully made any false representations or statements to complainant, or her agents, in furtherance of any conspiracy, or for the purpose of lulling to rest the inquiries or suspicions, or any inquiry or suspicion of complainant, in relation to any applications to select lieu lands, or in relation to any powers of attorney referred to in paragraphs fifteen and sixteen of complainant's amended bill of complaint.

4. Deny that there was any conspiracy of any kind or character, and deny that complainant was in any manner, or at all, cheated or defrauded by these defendants, or either of them, or by these defendants, or either of them, acting in collusion with or in connection with any person or persons whomsoever.

XVII.

1. Admit that the form of the powers of attorney signed, acknowledged and delivered by the said complainant was substantially as specified in paragraph seventeen of said bill of complaint; that the description of the instrument purporting to have been executed by Mollie Conklin, Edward A. Reddy, administrator of the estate of Patrick Reddy, deceased, and Emily M. Reddy, administratrix of the Estate of Patrick Reddy, deceased, on the 27th of September, 1900, wherein R. M. Cobban, one of the answering defendants herein, is named as attorney, are substantially correct as alleged in said paragraph seventeen of said amended bill of complaint, and these defendants allege that the said several powers of attorney were signed by complainant on different dates and at different times, some of them having been signed in

September, 1900, and others signed as late as March, 1901. [69]

XVIII.

1. Admit that complainant is not acquainted with and has never spoken to defendant, R. M. Cobban.

2. Deny that a question of trust or confidence or faith in the defendant, R. M. Cobban, was raised by any action or actions of complainant in signing or executing the papers referred to in her bill of complaint.

3. Deny that complainant never received anything of value or any consideration for the signing and execution of the said relinquishments to the United States and said applications to select lieu lands and said several powers of attorney to this defendant, but, on the contrary, allege the facts to be, that at the time of their execution and delivery, the defendant, R. M. Cobban, paid the full purchase price of the said base lands, to wit, \$4.00 and more per acre, and allege that the series of papers which she signed and executed were at the time of their execution and are now, the usual way for relinquishing base lands and authorizing the selection of lieu lands, and the sale of said lieu lands when selected, and that the said complainant received full consideration for the execution and delivery of said papers.

4. Admit that defendant, R. M. Cobban, never made any representations to said complainant in relation to the relinquishment of said base lands to the Government of the United States, nor as to the selection of lieu lands, nor as to the sale of said lieu lands when selected, but that the said arrangement with complainant was made entirely between the said com-

plainant and her representatives and agents in California, and that the answering defendant, Cobban, carried on his negotiations wholly with the agent and representative of complainant, John A. Benson, and that said defendant acted in good faith and paid to the [70] said John A. Benson, as agent of complainant, the entire purchase price of said base lands, which was the sum of \$4.00 per acre in some cases, and more than that amount in other cases.

5. Deny that complainant never received any value by way of consideration, or otherwise, from the defendant, Cobban.

6. Deny that complainant never did knowingly sign the said relinquishments, or the said applications, or the said several powers of attorney, but, on the contrary, alleges the facts to be, that she did knowingly sign the said relinquishments to the Government of the United States of the said base lands, and the said applications to select lieu lands in place thereof, and did knowingly sign the said several powers of attorney authorizing the sale of such lands when selected.

7. Deny that complainant never knowingly or consenting thereto gave the said powers of attorney, but, on the contrary, allege that she, knowingly and consenting thereto, gave each and all of the said powers of attorney, and that they were each and all made irrevocable to the said R. M. Cobban, and that each and every one of them authorized R. M. Cobban to sell, transfer, dispose of, exchange or otherwise deal in the said lieu lands and the whole thereof in accordance with his own judgment.

8. Deny that the said powers of attorney, or any

or either of them, were wholly, or at all, without consideration of any kind or character, but, on the contrary, allege that the said complainant was paid for said powers of attorney, for said applications to select lieu lands, and for said relinquishments to the Government of the United States, the full purchase price of the said base lands, to wit, the sum of \$4.00 per acre for [71] each and every acre of land described in said amended bill of complaint that the said complainant relinquished to the Government of the United States.

9. Deny on information and belief that the said complainant never acknowledged said powers of attorney, or any of them, but, on the contrary, allege on information and belief, that the said complainant duly acknowledged each and every one of the said powers of attorney and duly appeared in person before the several notaries public referred to in said powers of attorney, whose names are attached to the certificates of acknowledgment annexed to the said several powers of attorney, and that said complainant duly acknowledged each of said powers of attorney as specified in said acknowledgments.

10. Deny that any of the certificates of acknowledgment or either of them, are wholly or at all false or untrue, and deny that any or either of said acknowledgments were taken without complainant's knowledge or consent, or that any or either of said powers of attorney are false or forged.

XIX.

1. Deny having knowledge or information sufficient to form a belief as to whether or not any administration was ever had upon the Estate of Patrick

Reddy, deceased, in the State of Idaho.

2. Deny on information and belief that Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator, who appear in said alleged powers of attorney to have executed the same, did not have power or authority to make and execute the said alleged powers of attorney, or either of them, but allege, to the contrary, that the said R. M. Cobban was duly made and appointed attorney in fact by Emily M. Reddy, as administratrix [72] and attorney in fact by Edward A. Reddy, administrator, and that the said powers of attorney were valid and existing powers of attorney and have been recognized as such by the United States Land Office located in Idaho.

XXI.

1. Admit that on the 21st day of September, 1901, the said R. M. Cobban executed, acknowledged and delivered the writing as set out in paragraph XXI of complainant's bill in equity.

XXII.

1. Admit that during the year 1902 the lieu lands selected by the defendant, R. M. Cobban, were patented by the United States in the name of Mollie Conklin, Emily M. Reddy, administratrix, and Edward A. Reddy, administrator; but deny that said lands or any of them were patented to the said complainant, Emily M. Reddy and Edward A. Reddy otherwise than for the use and benefit of the defendant, R. M. Cobban.

2. Admit that at the time R. M. Cobban made and acknowledged a deed of said land to E. B. Weirick, and placed said deed on the records of Boise,

Idaho, the complainant, Mollie Conklin, did not have, nor did Emily M. Reddy, Adm'x., or Edward A. Reddy, as Adm'r, have any right, title or interest in or to said property, but that the said property, and, all of it, was owned by the said R. M. Cobban, or by the parties represented by him, and that at said time and place, the said R. M. Cobban had full and lawful authority and right to transfer and convey the title to said lieu lands, and all the title to said lieu lands to E. B. Weirick, trustee.

3. Deny that at said time Henry Turrish, Joseph C. Campbell, John A. Benson, or any promoting stockholder of the Payette Lumber and Manufacturing Co., had any right, title or interest in or to [73] the said property or any part or portion thereof.

XXIII.

Deny that at any time, the said Cobban and the said Weirick, or either of them, were agents or dummies, or that either of them was an agent or dummy of Benson, or Turrish, or any known or unknown promoting stockholder.

2. Deny that Cobban and Weirick, or either of them, acted as, or were used as, a mere tool, or as mere tools, or at all, by the said Benson, or Turrish, or any promoting stockholder of the Payette Lumber and Manufacturing Company or either the said Benson, Turrish, or any promoting stockholder.

3. Deny that the said Cobban and Weirick, or either of them, were used as conduits to effect any alleged transfer of said lieu lands to the said Lumber Company, thereafter to be organized.

4. Deny that the said Cobban and Weirick, or either of them, were or was used as a conduit for the

transfer of any of the proceeds of said lands to Benson.

5. Deny that any acts of the said R. M. Cobban and E. B. Weirick, either personally or as trustees, were in any respect under the control or direction, or for the use or benefit of the said Benson or Turkish, or any promoting stockholder.

6. Deny that the said transaction was in substance or effect, or at all, a deal between or for the use or benefit of the said Benson or the said Payette Lumber and Manufacturing Co.

7. Deny that the said Payette Lumber and Manufacturing Company thereafter to be organized was the real party for whom said Weirick was acting as trustee, or that said company was the purported or intended beneficiary thereunder.

8. Deny that the said Cobban and the said Turkish, or [74] either of them, were promoting stockholders of said company, or were acting for or on behalf of said company.

XXIV.

1. Deny that complainant did not know that the said powers of attorney were in existence, or that the said conveyance to the said Weirick, trustee, was in existence prior to the first day of January, 1903.

2. Deny that complainant had any right or authority to repudiate the said powers of attorney, or either of them, and deny that her alleged repudiation of said powers of attorney, or either of them, had any force or effect whatever as against the said Weirick, personally, or as against the said Weirick, as trustee, but allege, to the contrary, that the said Weirick, personally, and the said Weirick, as trustee, was and

is a bona fide purchaser for value, of all the property described in paragraph IX of complainant's amended bill of complaint.

3. Denies having knowledge or information sufficient to form a belief as to any verbal agreement between complainant and Benson.

4. Deny having any knowledge or information sufficient to form a belief as to any money complainant has received from the said Benson upon the contract made between her and Benson relative to the lands in controversy in this suit.

XXV.

1. Deny that the said R. M. Cobban, E. B. Weirick, individually, and also as trustee, Payette Lumber and Manufacturing Company, John Doe, Mary Doe, Richard Roe and Thomas Roe, or either of them, unjustly claim any interest or estate adverse to complainant in any lieu lands described in paragraph VII of complainant's bill of complaint herein. [75]

2. Deny that none of the said defendants has any rightful claim, right, title or interest in or to said lands.

3. Deny that the claims of the said R. M. Cobban and E. B. Weirick, individually and as trustee, or either of them, are without right, or that any conveyance to E. B. Weirick is invalid, or fraudulent, or forged.

XXVI.

1. Deny that any of the actions or doings of these answering defendants, or either of them, are contrary to equity or good conscience, or tend to any manifest wrong, injury, or oppression of complainant, and deny that complainant is entitled to any relief whatever

in a court of equity or elsewhere.

Deny, generally, each and every allegation contained in complainant's said amended bill of complaint not hereinabove specifically admitted or denied.

By way of affirmative defense to the alleged and pretended cause of action set forth in plaintiff's Mollie Conklin's amended bill of complaint, these answering defendants allege the facts to be:

1. That on or about the month of February, 1901, R. M. Cobban, being then engaged in the real estate business in the City of Butte, Silver Bow County, Montana, made arrangements with certain residents of Montana, whereby the said parties through the said R. M. Cobban, undertook the purchase of lieu land scrip for the purpose of investment, and in the matter of making such investment, the said R. M. Cobban, acted for himself, and as agent for the parties above named, among said parties being E. B. Weirick, named herein as E. B. Weirick, and E. B. Weirick, as trustee.

2. That in the purchase of the said scrip, an abstract of title was furnished to the said R. M. Cobban, showing a clear [76] title in the person offering the scrip for sale, and a conveyance by such party of land in a Forest Reserve by warranty deed to the United States Government.

3. There was also furnished to the said R. M. Cobban, with each abstract submitted, a power of attorney wherein, and whereby the person named, or to be named or appointed in the power of attorney was authorized "to enter into and take possession of each and every tract of public land in any State or territory

of the United States that has been, or may hereafter be, selected by us in lieu of the lands surrendered to the United States as aforesaid, or any portions thereof, whether the said selection or selections be made by us personally or by some one else acting through power of attorney for us.” And also granting to the said attorney in fact full power and authority “to grant, bargain, sell and convey by good and sufficient deed, all of the right, title and interest” that the party executing such power of attorney then owned, or held possession of; also all the right, title and interest that the party making such power of attorney might thereafter acquire in or to the land that has been or that might thereafter be selected as aforesaid, or any part thereof, for such sum or price as such party might deem proper. Such power of attorney was by the act of the party signing the same made irrevocable.

4. That with such power of attorney was also furnished a further power of attorney authorizing the party named or to be named in the power of attorney signed, to enter into and take possession of each and every tract of land selected by the party executing the power of attorney and authorizing the said party to conduct all business necessary in such case before the Land Office at Boise, Idaho, or before the Department of the Interior at Washington, D. C., with full power of substitution and revocation, [77] and authorizing such attorney to post notices of the application upon the ground and make proofs of such posting and further affidavits required by the United States Land Office in the matter of perfecting the

title to the lands selected in lieu of land granted by the party offering for sale such scrip to the Government of the United States.

5. That pursuant to the said plan above outlined, the said R. M. Cobban, on or about the 19th day of February, 1901, purchased in the regular course of business from the plaintiff, Mollie Conklin, through John A. Benson of San Francisco, California, certain lieu land scrip in the following manner, that is to say: That on or about the date last mentioned, the said Benson caused to be deposited in either the First National Bank of Butte, Montana, or the First National Bank of Boise, Idaho, or the Anglo-California Bank, Ltd., of San Francisco, California, in escrow, the following-named papers, namely:

(a) Abstracts of title showing the prior ownership by Mollie Conklin et al. of 640 acres of land in Tulare County, California, being

E. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$ of Section 16, Township 18 South, Range 34 East, Tulare County, California;

W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of Section 14, Township 18 South, Range 34 East, Tulare Co., California;

S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of Section 14, Township 20, South, Range 35 E., Tulare County, California.

(b) Warranty deed conveying said land, executed by Mollie Conklin et al., transferring said land to the Government of the United States, and showing a record of said deeds in the office of the County Clerk & Recorder of Tulare County, Cal., [78] being the county in which the said land is situated.

(c) Powers of attorney, irrevocable, signed by the said Mollie Conklin et al., and in substantially the following form, to-wit:

“KNOW ALL MEN BY THESE PRESENTS: That, Whereas, by an act of Congress, approved June 4, 1897, (30 Stat. 36) it is provided,

‘That in cases in which a tract covered * * * a patent is included within the limits of a public forest reservation * * * the owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement,’ etc.

And, whereas, on the nineteenth day of September, 1900, We, Mollie Conklin, a widow of Bakersfield, County of Kern, State of California, and Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, both of the City and County of San Francisco, said State, were the owners of the following described land:

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And, whereas, on the said last-named day we surrendered the said land to the United States by deed of conveyance duly executed by which we became entitled to select other lands of equal acreage in lieu thereof.

Now, therefore, we have made, constituted and appointed, and by these presents do make, constitute and appoint of in the County of

....., State of, our true and lawful attorney for us and in our names, places and steads, to enter into and take possession of each and every tract of public land in any State or Territory of the United States that has been or may hereafter be selected by us in lieu of the land surrendered to the United States as aforesaid, or any portion thereof, whether the said selection or selections be made by us personally or by some one else acting through power of attorney for us.

Our said attorney in fact is also hereby authorized and empowered to grant, bargain, sell and convey by good and sufficient deed, all of the right, title and interest that we may hereafter acquire of, in and to the land that has been or may hereafter be selected as aforesaid, or any part thereof, for such sum or price as he may deem proper.

And for all or any of the powers and purposes aforesaid, for us and in our names to make, execute and acknowledge and deliver all necessary deeds, conveyances, assignments or other instruments of whatever kind or nature.

Giving and granting unto our said Attorney full power and authority to do and perform all and every act and thing whatsoever [79] requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

For value received, the receipt whereof is hereby acknowledged, this Power of Attorney is hereby made and declared to be irrevocable by us or otherwise.

In Witness Whereof, we have hereunto set our hands and seals on the twenty-eighth day of February, 1901.

MOLLIE CONKLIN.

Signed, Sealed and Delivered in the Presence of
C. E. GLOVER.

J. H. LAVENSON.

EDWARD A. REDDY,
Administrator of the Estate of Patrick Reddy, Deceased.

EMILY M. REDDY,
Administratrix of the Estate of Patrick Reddy, Deceased.

State of California,
City and County of San Francisco,—ss.

On this twenty-eighth day of February, one thousand nine hundred and one, before me Thomas S. Burnes, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin (a widow) Edward A. Reddy, Administrator, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument and they severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy, and the said Emily M. Reddy, further acknowledged to me that they executed the same respectively as Administra-

tor and Administratrix of the Estate of Patrick Reddy, deceased.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

THOMAS S. BURNES,
Notary Public in and for the City and County of
San Francisco, State of California.”

(d) Also further Powers of Attorney, signed by the said Mollie Conklin, in substantially *in* the following form:

“Whereas, the undersigned, Mollie Conklin, whose postoffice address is Bakersfield, Cal., and Edward A. Reddy, Administrator and Emily M. Reddy, Administratrix, of the estate of Patrick Reddy deceased, whose postoffice address is Crocker Building, San Francisco, California, have made application to select under the provisions of the Act of June 4, 1897 (30 Stats. 36), in the U. S. Land Office at [80], the following described tract:

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Now, therefore, we the said Mollie Conklin, Edward A. Reddy and Emily M. Reddy, Administrator and Administratrix of the Estate of Patrick Reddy, deceased, have made, constituted and appointed, and by these presents do make, constitute and appoint, of, our true and lawful attorney in fact in our name, place and stead, to enter into and take possession of each and every tract of land so selected by us. Said as attorney in fact

is hereby authorized and empowered to conduct all business necessary in said case before the Land Office at Boise, Idaho, or before the Department of the Interior at Washington, D. C., with full power of substitution and revocation, hereby ratifying and confirming all that our said attorney or his substitute or substitutes shall lawfully do or cause to be done by virtue hereof.

And, Whereas, it is provided by Circular 'P.' dated January 29, 1900, of the Honorable Commissioner of the General Land Office that a notice of such selection be posted on the ground described in the application, and the proof of such posting be filed in the U. S. Land Office for the District in which the land is situated.

Now, Therefore, is hereby duly authorized and appointed as my agent to post, notices on the ground described in said application, and to make affidavit of that fact, and also of the fact that said notices remain posted during the period of publication.

MOLLIE CONKLIN.

E. A. REDDY,

Administrator of the Estate of Patrick Reddy,
Deceased.

EMILY M. REDDY,

Administratrix of the Estate of Patrick Reddy,
Deceased.

San Francisco, California,
February 28th, 1901.—ss.

On this twenty-eighth day of February, one thousand nine hundred and one, before me, Thomas S.

Burnes, a Notary Public in and for the said City and County of San Francisco, personally appeared Mollie Conklin, a widow, Edward A. Reddy, Administrator, and Emily M. Reddy, Administratrix of the Estate of Patrick Reddy, deceased, personally known to me to be the same persons whose names are subscribed to the within instrument, and they severally duly acknowledged to me that they executed the same, and the said Edward A. Reddy, and the said Emily M. Reddy, further duly acknowledged to me that they executed the same respectively as Administrator and Administratrix of the Estate of Patrick Reddy, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written. [81]

THOMAS S. BURNES,
Notary Public, in and for the City and County of San Francisco, State of California.

My term of office expires Jan. 6th, A. D. 1894."

The said Powers of Attorney in each case being duly acknowledged by the said Mollie Conklin before a notary public in and for the City and County of San Francisco, State of California, and bearing the seal of such notary public; the said powers of attorney, in each case, leaving the name of the attorney appointed blank in order that the same might be filled by the party purchasing the lieu land script offered for sale.

(e) There was also deposited in said bank with said papers above described and in connection with said papers, a blank form of application to select and

locate land in lieu of the land in the Sierra Forest Reserve, Tulare and Inyo Land District, State of California, surrendered by the said Mollie Conklin, said application being in substantially the following form:

Act. June 4, 1897 (30 Stat. 36).

SELECTION IN LIEU OF LAND IN THE
SIERRA FOREST RESERVE,
Tulare and Inyo Land District, State of California.
Created

TO THE REGISTER AND RECEIVER,
United States Land Office,

.....
.....

Gentlemen:—

In accordance with the provisions of an Act of Congress approved June 4, 1897, entitled “An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1898, and for other purposes,”

I, Mollie Conklin, of San Francisco, City and County, State of California, do hereby select and locate the following described tract of surveyed land, to wit:

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IN LIEU OF

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The said last mentioned tract is included within the limits of the Sierra Forest Reservation in California, and being the owner, and desiring to select other land in lieu of said tract, I made and executed a deed of reconveyance thereof to the United States, on the day of, as provided by the said Act of June 4, 1897, which said deed has been recorded in the proper County. I therefore ask that a United States patent issue to me for the said land hereby selected.

Witness my hand this day of,
190.....

.....
.....

WITNESS:

Land Office at
..... 190.....

I,, Register of the land office, do hereby certify that the land above selected, in lieu of land relinquished to the United States, is free from conflict, and that there is no adverse filing, entry, or claim thereto.....

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.....

Register.

Selection approved by the Commissioner of the

General Land Office, per letter "P" to Register and Receiver.

....., 190.....

.....Div. "P"

(Endorsement:) Application of

.....

P. O. ADDRESS

To Select the

Situated in

District

In lieu of the

Situated in

District

Under Act June 4, 1897 (30 Stat. 36). [83]

Selection approved by Commissioner General Land Office....., 190.....

Approved for patenting.....

Patented.....

.....,

Division "P".

Vol., Page

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That the said form of selection was in each and every case duly signed by the said Mollie Conklin, and in the body of said form described fully the land conveyed to the Government of the United States, but blank as to the description of the land to be selected, such description to be inserted by the party purchasing the scrip.

(f) That with said papers above described there were also drafts or a draft for the amount of the purchase price demanded by the said Mollie Conklin

et al., through the said John A. Benson, which said drafts were drawn upon R. M. Cobban at the bank where said papers were deposited and in favor of John A. Benson.

6. That all of said papers above described were deposited at said bank subject to examination and approval by the said R. M. Cobban, and with the express understanding and agreement that if approved by the said Cobban, he was authorized to insert his name as attorney in the Powers of Attorney to be delivered, and to insert the description of the land selected in the application for selection of lieu lands hereinabove described.

7. That thereupon the said R. M. Cobban did examine the said papers, and finding the title conveyed to the Government of the United States by warranty deed to have been in Mollie Conklin et al., and that the papers upon their face showed the right and title of Mollie Conklin et al. in said land transferred, and her right to make a selection of lieu lands by reason of such transfer to the United States, the said R. M. Cobban did approve [84] the said papers and did thereupon pay the said sight drafts referred to; and for the said right to make selection of lieu lands did pay to the said Mollie Conklin et al. through the said John A. Benson, the sum of \$2,560.00 for the 640 acres of land hereinabove last described, and thereupon inserted his name in the said papers, and powers of attorney, as he had a right to do in accordance with the understanding and agreement had with the said Mollie Conklin et al. through the said Benson, and inserted in the said application for

selection of lieu lands, a description of the property selected by him, Cobban, for entry of such lieu land scrip.

8. That thereupon, on April 9th, 1901, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District hereinafter described, and thereafter, to wit, on July 22d, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Section 32, T. 15 N., R. 4 E.;

SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 26, T. 13 N., R. 3 E.;

Lot 1, and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Section 2, W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Section 1, T. 12 N., R. 3 E.;

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 29, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 31, T. 15 N., R. 4 E., containing 648.02 acres, and all being situated in Boise County, Idaho, the patent for said land being numbered 4514.

9. That on the 6th day of March, 1901, the said Cobban, under like terms and conditions, and under like circumstances, [85] purchased from the said Mollie Conklin et al. through the said Benson scrip representing 563.13 acres, and described as follows, to wit:

S. $\frac{1}{2}$ of NE. $\frac{1}{4}$, N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Section 21, T. 20 S., R. 35 E.;

NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 4, Section 6, T. 19 S., R. 35 E.;

S. $\frac{1}{2}$ of NE. $\frac{1}{4}$, S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 11, T. 20 S., R. 34 E., all in Tulare County, State of California;

E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 25, T. 19 S., R. 34 E.; at the price of \$2,240.00.

10. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al. but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on August 20th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Lot 3 and Lot 4, Sec. 19, T. 15 N., R. 4 E.;

SE. $\frac{1}{4}$ and E. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Sec. 25, T. 15 N., R. 3 E.;

Lot 1 and Lot 4 in Sec. 35, T. 12 N., R. 3 E., containing 568.43 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4501.

11. That on the same date, March 6th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, [86] purchased from the said Mollie Conklin et al. through the said Benson, scrip representing 200 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 31, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Section 32, T. 17 S., R.

35 E., all in Tulare County, California, at the price of \$800.00.

12. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, herein after described, and thereafter, to wit, on Aug. 28, 1902, upon such scrip procured from the United States Government, patent for the following described land, to wit:

E. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 31, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 32, T. 16 N., R. 4 E., containing 200 acres and situated in Boise County, Idaho, the patent for said land being numbered 4511.

13. That on the same date, March 6th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 200 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 6, E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 2, Sec. 7, T. 18 S., R. 34 E., in Tulare County, State of California, at the price of \$800.00.

14. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, [87] and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise Dis-

trict, hereinafter described, and thereafter, to wit, on Sept. 15th, 1902, upon such scrip procured from the United States Government patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 31, SW. $\frac{1}{4}$, Section 32, in T. 16 N., R. 4 E., containing 200 acres and situated in Boise County, Idaho, the patent for said land being numbered 4513.

15. On March 12th, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, W. $\frac{1}{2}$ of SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 26, T. 20 S., R. 35 E., Tulare County, California, at the price of \$640.00.

16. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in Boise District, hereinafter described, and thereafter, to wit, on Aug. 28, 1902, upon such scrip procured from the United States Government patent for the following described land, to wit:

SW. $\frac{1}{4}$ of Section 28 T. 16 N., R. 4 E., containing 160 acres and situated in Boise County, Idaho, the patent for said land being numbered 4512.

17. That on March 12th, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, [88] purchased from the said

Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Sec. 23, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$640.00.

18. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 29, T. 16 N., R. 4 E.;

Lot 4 and the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, Sec. 4, T. 15 N., R. 4 E., containing 165.39 acres and situated in Boise County, Idaho, the patent for said land being numbered 4507.

19. That on April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40.02 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, or Lot 3, Sec. 3, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

20. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise,

Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, [89] under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot No. 1, Sec. 6, T. 15 N., R. 4 E., containing 44.94 acres situated in Boise County, Idaho, the patent for said land being numbered 4510.

21. That on the same date, April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 3, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

22. That thereupon, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot 2, Sec. 6, T. 15 N., R. 4 E., containing 44.42

acres and situated in Boise County, Idaho, the patent for the said land being numbered 4509.

23. That on the same date, April 12th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, [90] and described as follows, to wit:

SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Section 15, T. 20. R., R. 35 E., in Tulare County, California, at the price of \$160.00.

24. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin, but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip, and for money paid to the United States Government, procured from the United States Government, patent for the following described land, to wit:

Lot 3, Sec. 5, T. 15 N., R. 4 E., containing 45.27 acres, and situated in Boise County, Idaho, the patent for the said land being numbered 4508.

25. That on the said date, April 12, 1901, the said Cobban, under like terms and conditions and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 3, T. 20 S., R. 35 E., situated in Tulare County, California, at the price of \$160.00.

26. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 28th, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent [91] for the following described land, to wit:

Lot 4 in Sec. 5, T. 15 N., R. 4 E., containing 45.22 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4502.

27. That on the same date, Apr. 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 4, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$160.00.

28. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on the 20th day of August, 1902, upon such scrip and for money paid to the United States Government, procured from the United States Government, patent for the

following described land, to wit:

Lot 2, in Sec. 5, T. 15 N., R. 4 E., containing 45.31 acres and situated in Boise County, Idaho, the patent for said land being numbered 4503.

29. That on June 24, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 80.37 acres of land, and described as follows:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, of Sec. 15, T. 18 S., R. 34 E.; and

NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ or Lot 1, Sec. 4, T. 20 S., R. 35 E.,
[92] all in Tulare County, California, at the price of \$321.16.

30. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 19, T. 13 N., R. 5 E., and SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 19, T. 13 N., R. 5 E., containing 80 acres and situated in Boise County, Idaho, the patents for said land being numbered 4784 and 4778, respectively.

31. That on April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 200

acres of land, and described as follows, to wit:

S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 14, T. 17 S., R. 34 E., in Tulare County, California, at the price of \$850.25.

32. That thereupon the said R. M. Cobban made application at the United States land office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on September 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SE. $\frac{1}{4}$ of SE. $\frac{1}{4}$, S. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Section 5, T. 15 N., R. 4 E., [93] containing 200 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4826.

33. That on the same date, April 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 400 acres of land, and described as follows, to wit:

S. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 33, N. $\frac{1}{2}$ of NW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, Sec. 34, T. 17 S., R. 35 E., and

E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 22, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$1,700.00.

34. That thereupon the said R. M. Cobban made application at the United States Land Office at

Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

S. $\frac{1}{4}$ of SE. $\frac{1}{2}$, SE. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 26, T. 16 N., R. 4 E., and

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$, Sec. 26, T. 16 N., R. 4 E., containing 400 acres, and situated in Boise County, Idaho, the patents for said land being numbered 4777 and 4776 respectively.

35. That on July 12, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased [94] from the said Mollie Conklin et al., through the said Benson, scrip representing 640 acres of land, and described as follows, to wit:

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Sec. 9, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 15, SE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 16, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, E. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Sec. 22, all in T. 17 S., R. 35 E., Inyo County, California, at the price of \$2,720.00.

36. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, herein-

after described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Section 17, T. 16N., R. 4 E.;

NW. $\frac{1}{4}$, N. $\frac{1}{2}$ of NE. $\frac{1}{4}$, Section 35, T. 16 N., R. 4 E., containing 640 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4774.

37. That on July 20, 1901, the said R. M. Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said John A. Benson, scrip representing 40 acres of land, and described as follows, to wit:

SW. $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 13, T. 18 S., R. 34 E., in Tulare County, California, [95] at the price of \$170.00.

38. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government patent for the following described land, to wit:

SW. $\frac{1}{4}$ of SW. $\frac{1}{4}$ of Sec. 29, T. 16 N., R. 5 E., containing 40 acres and situated in Boise County,

Idaho, the patent for the said land being numbered 4785.

39. That on the same date, July 20, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$ of Sec. 13, T. 18 S., R. 34 E., in Tulare County, California, for the price of \$170.00.

40. That thereupon the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, procured from the United States Government, patent for the following described land, to wit:

NE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 7, T. 13 N., R. 5 E., [96] containing 40 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4780.

41. That on the same date, July 20th, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 40 acres of land, and described as follows, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 10, T. 20 S., R. 35 E., in Tulare County, California, at the price of \$170.00.

42. That thereupon the said R. M. Cobban made

application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Sept. 15, 1902, upon such scrip, procured from the United States Government, patent for the following described land, to wit:

SE. $\frac{1}{4}$ of NW. $\frac{1}{4}$, Sec. 7, T. 13 N., R. 5 E., containing 40 acres, and situated in Boise County, Idaho, the patent for said land being numbered 4773.

43. That on July 23, 1901, the said Cobban, under like terms and conditions, and under like circumstances, purchased from the said Mollie Conklin et al., through the said Benson, scrip representing 160 acres of land, and described as follows, to wit:

NW. $\frac{1}{4}$ of Sec. 23, T. 20 S., R. 35 E., Tulare County, California, at the price of \$680.00. [97]

44. That thereupon, the said R. M. Cobban made application at the United States Land Office at Boise, Idaho, to enter, and did enter, in the name of Mollie Conklin et al., but for the use and benefit of the said R. M. Cobban and his associates, under said scrip above referred to, land in the Boise District, hereinafter described, and thereafter, to wit, on Aug. 20th, 1902, upon such scrip, procured from the United States Government patent for the following described land, to wit:

NW. $\frac{1}{4}$ of Sec. 25, T. 16 N., R. 4 E., containing 160 acres and situated in Boise County, Idaho, the patent for the said land being numbered 4775.

45. That in the year 1901, pursuant to the said powers of attorney hereinabove referred to, and the action of the said R. M. Cobban taken thereunder, and pursuant to the rights conveyed and transferred to the said R. M. Cobban by the said Mollie Conklin et al., the said R. M. Cobban, by various deeds transferred and conveyed to the said E. B. Weirick, trustee, of Silver Bow County, Montana, all of the property hereinabove described as having been patented by the United States of America in the name of Mollie Conklin et al., but for the use of the said R. M. Cobban and his associates.

46. That in the said purchase of the said scrip, and in said selections of lieu lands, and in the patenting of the same, and in the transfer of the said property to the said E. B. Weirick, trustee, the said Payette Lumber and Manufacturing Company did not have, nor did anybody in any manner interested in the said Payette Lumber and Manufacturing Company have, nor did any person or persons representing or purporting to represent said company have, any right, title, interest or claim whatsoever, but said action and all of said actions and [98] all of said proceedings were had and taken for the sole and only use and benefit of the said R. M. Cobban, E. B. Weirick and their associates, residents and citizens of the State of Montana.

46. That during the progress of the application for patent for said land by the said R. M. Cobban, and before the transfer thereof to the said E. B. Weirick, trustee, the United States Land Office called upon the said R. M. Cobban, from time to time, for

special authority in the matter of taking certain steps and proceedings in such application, and that thereupon the said R. M. Cobban procured to be written a form of power of attorney to cover the exact requirements of the land office, and to be printed in said form his own name as attorney in fact, and thereupon forwarded the said special powers of attorney to the said Mollie Conklin, through her agent, John A. Benson, and thereupon, the said powers of attorney, with the name of the said R. M. Cobban inserted therein, were by the said Mollie Conklin, duly executed, acknowledged and delivered to the said R. M. Cobban through the said John A. Benson, and that upon the said powers of attorney so executed, acknowledged and delivered by the said Mollie Conklin, in addition to the Powers of Attorney theretofore executed and delivered by her, the Government acted in issuing patents in the name of Mollie Conklin et al.

47. That thereafter, and after patents had been issued by the United States Government for all of said lands hereinabove described, the said E. B. Weirick, trustee, for a valuable consideration then and there paid to him, sold and transferred all of said described property to Payette Lumber and Manufacturing Company by several deeds of warranty, which said deeds were each duly recorded in the office of the county clerk and recorder [99] of Boise County, Idaho.

48. That at no time prior to the execution of the said deeds by the said E. B. Weirick, trustee, and at no time prior to the sale of the said property by

the said E. B. Weirick, trustee, to the said Payette Lumber & Manufacturing Company, did the said E. B. Weirick, trustee, or the said R. M. Cobban, or any person or persons whomsoever represented by the said R. M. Cobban, or the said E. B. Weirick, trustee, have any knowledge, notice or suggestion of any kind or character whatsoever that Mollie Conklin in any manner, or at all, questioned any of her acts, or proceedings hereinbefore recited, or any of the powers of attorney or other instruments signed, executed, acknowledged and delivered by her, or any of the acts or transactions had on her behalf by or through the said John A. Benson, but that the said E. B. Weirick, trustee, and the parties represented by him, had relied upon the said powers of attorney executed, acknowledged and delivered by the said Mollie Conklin, and the acts and proceedings had by the said Mollie Conklin, above recited, and the payments of money for her benefit to the said John A. Benson and in all respects believed and had a right to believe that the said Mollie Conklin had parted with and intended to part with all her right, title and interest in and to the land selected under said lieu land scrip purchased by the said R. M. Cobban in the manner and from hereinabove stated. And these defendants did not have, nor did either of them have, nor did any person or persons represented by these defendants, or either of them, have knowledge or notice of any kind or character of any fraud or attempted fraud on the part of any person or persons whomsoever having been perpetrated, or attempted to be perpetrated upon the said Mollie

[100] Conklin with reference to said lands or any part or portion thereof.

49. That in the procuring of said lieu land scrip and in making the selections of land under such scrip, and in the procuring of United States Patent for said land, the said R. M. Cobban and his associates expended large sums of money independent of the amount actually paid to the Government for said land in the matter of locating the land, examining titles, posting notices, and taking such steps as were necessary for perfecting the title of said land to the said R. M. Cobban and his associates.

50. That the said John A. Benson at all times purported to act as agent for and with full authority from, the said Mollie Conklin, and was, as these answering defendants allege on information and belief, such agent, and that, as these defendants allege on information and belief, the said Mollie Conklin took and received the consideration paid by these answering defendants through the said John A. Benson, for the said scrip.

Wherefore, these defendants having fully answered the amended bill in equity of the said complainant, Mollie Conklin, on file herein, ask to be dismissed hence with their costs of suit herein expended.

RICHARDS & HAGA,
McBRIDE & McBRIDE,

Solicitors for R. M. Cobban and E. B. Weirick, Personally, and E. B. Weirick, Trustee. [101]

State of Montana,
County of Silver Bow,—ss.

R. M. Cobban, being first duly sworn, says: That he is one of the defendants filing the above and foregoing answer; that he has read the said pleading and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge, except as to such matters and things as are therein stated on information and belief, and as to such matters he believes it to be true.

R. M. COBBAN.

Subscribed and sworn to before me this 20th day of November, 1909.

[Seal]

ROBT. McBRIDE,

Notary Public for the State of Montana, Residing
at Butte, Montana.

My commission expires, December 11th, 1909.

Service of the above and foregoing answer acknowledged and copy received this day of November, 1909.

.....,

Solicitors for Complainant.

[Endorsed]: Filed Nov. 22, 1909. A. L. Richardson, Clerk. [102]

[**Replication of Mollie Conklin to Answer of R. M. Cobban et al.**]

In the Circuit Court of the United States, District of Idaho, for the Ninth Judicial District, Central Division.

IN EQUITY—CONSOLIDATED No. 60.
MOLLIE CONKLIN,

Complainant,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and also as Trustee, PAYETTE LUMBER AND MANUFACTURING COMPANY, a Corporation, JOHN DOE, MARY DOE, RICHARD ROE, and THOMAS ROE,

Defendants.

REPLICATION TO ANSWER OF THE DEFENDANTS, R. M. COBBAN, E. B. WEIRICK, PERSONALLY AND E. B. WEIRICK, TRUSTEE, TO THE COMPLAINANT'S BILL OF COMPLAINT.

This replicant, Mollie Conklin, saving and reserving to herself all and all manner of advantages of exceptions which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants R. M. Cobban, E. B. Weirick, personally and E. B. Weirick, trustee, for replication thereunto saith; that she does and will aver, maintain and prove her said Bill of Complaint to be true, certain and sufficient in law to be answered unto by the said defendants; and that the

answer of said defendants is very uncertain, evasive and insufficient in law to be replied thereunto by this replicant; without that, that any other matter or thing in the said answer contains materially or effectually in law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true, all of which matter and things this replicant is [103] ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in her said Bill she has already prayed.

N. E. CONKLIN,
Residence Berkeley, California,
WM. B. DAVIDSON,
Residence Boise, Idaho,
Solicitors and of Counsel for Complainant, Mollie
Conklin.

Service of the above and foregoing replication of Mollie Conklin, complainant, accepted this 7th day of December, 1909.

McBRIDE & McBRIDE, and
RICHARDS & HAGA.
Solicitors and of Counsel for Defendants, R. M. Cob-
ban, E. B. Weirick, Individually, and E. B.
Weirick, Trustee.

[Endorsed]: Filed December 7th, 1909. A. L.
Richardson, Clerk. [104]

[Testimony Taken January 3, 1910, Before Special
Examiner McCracken.]

*In the Circuit Court of the United States, for the
District of Idaho, Ninth Judicial District, Cen-
tral Division.*

UNITED STATES OF AMERICA, and MOLLIE
CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually and
also as Trustee, PAYETTE LUMBER &
MANUFACTURING COMPANY, a Corpo-
ration, JOHN DOE, MARY DOE, RICH-
ARD ROE, and THOMAS ROE,

Defendants.

Testimony Taken January 3, 1910, before ROBERT
M. McCRACKEN, Special Examiner.

APPEARANCES:

WM. B. DAVIDSON and N. E. CONKLIN, for
Complainant Mollie Conklin.

D. L. TIPTON, Assistant U. S. Attorney, for Com-
plainant United States of America.

J. H. RICHARDS, for Defendants Cobban and
Weirick.

ALFRED A. FRASER, for Defendants Campbell
and Benson.

JOHN J. BLAKE, for Defendant Payette Lumber
Company. [106*—2†]

*Page-number appearing at foot of page of certified Transcript of
Record.

†Original page-number appearing at foot of page of Testimony as
same appears in Certified Transcript of Record.

[**Testimony of Mrs. Mollie Conklin, for
Complainants.**]

Mrs. MOLLIE CONKLIN, produced as a witness for complainants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. CONKLIN.)

Q. What is your name? A. Mollie Conklin.

Q. Are you the Mollie Conklin who is the complainant or plaintiff in this case? A. Yes.

Q. Are you a widow? A. I am.

Q. What was your husband's name?

A. Alvah R. Conklin.

Q. Did you know Mrs. Patrick Reddy in her lifetime? A. Very well.

Q. Who was she?

A. She was my husband's sister.

Q. Is she now living? A. No.

Q. What was her husband's name?

A. Patrick Reddy.

Q. What relation existed between you?

(No answer.)

Q. Do you know N. E. Conklin? A. I do.

Q. Do you know Mrs. M. S. Olcese?

(No answer.)

Q. What relation exists between you and N. E. Conklin? A. He is my son.

Q. And Mrs. Olcese? A. She is my daughter.

Q. Do you know Mrs. Coleman?

A. I do. [107—3]

Q. Who was she?

(Testimony of Mrs. Mollie Conklin.)

A. She was Mrs. Reddy's daughter.

Q. Mrs. S. J. Coleman. Are you acquainted with one of the defendants in this case, John A. Benson?

A. I can't say that I am—I met him once.

Q. You met him one time, did you?

A. One time.

Q. Are you acquainted with Joseph C. Campbell?

A. Yes, slightly.

Q. Do you know the firm of Reddy, Campbell & Metson? A. Yes.

Q. The firm of Campbell & Metson? A. Yes.

Q. What is their business, if you know?

A. They are lawyers.

Q. And the place of their office is where?

A. In San Francisco.

Q. Do you know the building?

A. It was in the Crocker building; I don't know where it is now.

Q. Was that firm at any time acting as your attorneys? A. Yes.

Q. Now, during the year 1900, was the firm of Reddy, Campbell & Metson your attorneys at any time? A. Yes.

Q. And in what business—or in relation to what business? A. Law business.

Q. And what did they do for you?

A. They settled up the estate.

Mr. DAVIDSON.—Q. What estate?

A. My husband's estate. [108—4]

Mr. CONKLIN.—Q. And afterwards did the firm of Campbell & Metson act as your attorneys?

(Testimony of Mrs. Mollie Conklin.)

A. They did.

Q. Is the J. C. Campbell whom you testify as being acquainted with the same Campbell who was a member of the firm of Reddy, Campbell & Metson, and of the firm of Campbell and Metson? A. Yes.

Q. Was the firm of Reddy, Campbell & Metson the attorneys for your husband, A. R. Conklin, during his lifetime? A. They were.

Q. Have they been the attorneys for Mrs. Oleese also since the death of your husband?

A. They have.

Q. In your dealings with the firm of Campbell & Metson, in 1900, after the death of Mr. Reddy, and after the death of your husband, and the closing up of the estate, did you have any business with the firm of Campbell & Metson in 1900? A. Yes.

Q. And who in particular acted?

A. Mr. Campbell.

Q. And what business was that in relation to?

A. In relation to the Monache lands.

Q. Where are these Monache lands located?

A. Up in the Sierra Nevadas.

Q. In what country? A. Inyo and Tulare.

Q. What State? A. California.

Q. Do you own an interest in those Monache lands? A. I did. [109—5]

Mr. FRASER.—On behalf of the defendants J. C. Campbell and John A. Benson, I object to that as calling for the conclusion of the witness, and not the best evidence.

Judge RICHARDS.—The same objection on be-

(Testimony of Mrs. Mollie Conklin.)

half of R. M. Cobban and E. B. Weirick.

Mr. BLAKE.—The same objection on behalf of the Payette Lumber Company.

Mr. CONKLIN.—For the purpose of identification, I will ask that this paper, including the endorsements, be marked as Complainant's Exhibit "A," (Marked.)

Mr. CONKLIN.—I now offer in evidence a paper entitled "Order settling final account and decree of final distribution, in the matter of the estate of Alvah R. Conklin, deceased," in the Superior Court of the City and County of San Francisco, State of California, and endorsed, "Reddy, Campbell & Metson, Attorneys for Executrix, Rooms 116, 117, 118, 119, 120, 121, 122, Crocker Building, San Francisco, California," together with the certificate of the clerk, certifying that the same is a full true and correct copy of the same, with the seal attached.

Mr. FRASER.—We object to the introduction as incompetent, irrelevant, and immaterial, and it does not tend to prove title, and for the further reason that it is not authenticated in a manner which would permit it to be introduced as evidence in this action, no proper certificate of the Court being attached thereto of the presiding judge or chief magistrate. The objection is made on behalf of the defendants Campbell and Benson.

Judge RICHARDS.—The same objection on behalf of R. M. Cobban and E. B. Weirick, personally and as trustee.

Mr. BLAKE.—The same objection for the Payette Lumber Co. [110—6]

(Testimony of Mrs. Mollie Conklin.)

Mr. CONKLIN.—Q. Do you know Edward A. Reddy? A. I did.

Q. Who is he?

A. He was Mr. Reddy's brother, Mr. Patrick Reddy's.

Q. What Reddy? A. Pat Reddy.

Q. You stated that you had some business with Mr. Campbell, or in his office, in 1900, regarding the Monache lands. Will you please state what this business was, where the meeting was, and what occurred there at that time.

A. Mr. Campbell made arrangements to sell the Monache lands to Benson.

Mr. FRASER.—Q. What date was that?

A. After Mr. Reddy died. Mr. Reddy died in June—August or September, some time.

Mr. CONKLIN.—Q. The meeting was in August or September some time? A. Yes.

Q. What year? A. 1900.

Q. Where was it held?

A. In Mr. Campbell's office.

Q. Who was present, if anyone?

A. Mrs. Reddy and her daughter.

Q. What was the daughter's name?

A. Mrs. Coleman—and Benson and Campbell and my son and myself.

Q. What Mrs. Reddy? A. Mrs. Patrick Reddy.

Q. What Mrs. Coleman?

A. Her daughter, Mrs.— [111—7]

Q. What were her initials? A. S. J. Coleman.

Q. Now state what was done at that time, if anything.

(Testimony of Mrs. Mollie Conklin.)

A. Mr. Campbell made arrangements to sell the Monache lands to Benson.

Q. What were these arrangements, if you know?

A. Well, he was to sell them at first—

Mr. FRASER.—Counsel for the defendant Campbell moves to strike out that answer of the witness in which she states that Campbell made arrangements to sell the lands to Benson, for the reason that it is not responsive to the question, and calls for the conclusion of the witness, and states no facts.

Mr. CONKLIN.—Q. Just state what arrangements were made, if any.

A. Well, he made arrangements to sell the lands to Benson for \$4.00 at first, and then Benson said there was no such work about it—the abstracts and one thing and another—he asked for \$3.80, and we agreed on that, an acre.

Q. What else, if anything, did you agree on?

A. The deeds were to be drawn up and placed in escrow.

Q. By whom were the deeds to be drawn, if such an arrangement was made?

A. I suppose Campbell and Metson.

Mr. FRASER.—I object to that as a conclusion of the witness, and not responsive to the question. If you don't know, please don't state.

Mr. CONKLIN.—Just state what was done.

A. Benson was to draw up the papers.

Mr. FRASER.—Q. Who was? A. Benson.

[112—8]

Mr. CONKLIN.—Q. And then what was to be

(Testimony of Mrs. Mollie Conklin.)

done with them?

A. They were to be placed in escrow, not to be taken out until the money was put there for them.

Q. And who was to see that the deeds were placed in escrow, if anyone? A. Mr. Campbell.

Q. And how were the lands to be paid for, if you know?

A. At first we said thirty days, and then he asked for ninety; Benson asked that it be extended, that the time be extended to ninety days, and he was to pay it up entirely then.

Q. How was he to pay it?

A. He was to pay it in cash.

Q. Now, after this, what next occurred, if anything, in regard to that transaction?

A. He made two payments—

Q. No, I mean in regard to the papers.

A. They sent them up to—sent one bundle up to Mrs. Reddy's for us to sign.

Q. Who sent them up, if you know?

A. Sent from the office, she said; I didn't see anyone.

Q. Then, what was done?

A. She and I signed them.

Q. Where?

A. Up at her house, the first package.

Q. Where was her house, if you recollect?

A. On Pacific Avenue, San Francisco.

Q. Who was present at the time you signed those papers, if anyone?

A. Nobody; her daughter came in and out of the room while we were signing them.

(Testimony of Mrs. Mollie Conklin.)

Q. What is her daughter's name? [113—9]

A. Mrs. S. J. Coleman.

Q. How long after you had this meeting in Mr. Campbell's office did this occur, if you know?

A. I couldn't tell—I suppose a couple of months maybe, or a month or so; I couldn't tell the time exactly.

Q. When was the next time, if there was another time, that you signed any papers?

A. They sent down to where I was living, the Hotel Savoy, they sent another package to be signed.

Q. Who sent them there if you know?

A. They sent them up from the office; one of the office boys brought them.

Q. What office? A. Campbell & Metson's.

Q. One of whose office boys brought them?

A. Campbell & Metson's—one of their boys.

Q. You knew him to be from their office, did you?

A. Yes, because I had seen him there in the office.

Q. Who was present, if anyone, when you signed those papers? A. My daughter.

Q. What is your daughter's name?

A. Mrs. M. Olcese.

Q. Then, what was done with those papers, after you signed them? A. The boy came for them.

Q. What boy? A. One of the office boys.

Q. What office boy?

A. One of Campbell & Metson's.

Q. Did you ever see those papers after that?

A. No. [114—10]

Q. Did you ever see the papers after you signed

(Testimony of Mrs. Mollie Conklin.)

them at Mrs. Reddy's rooms? A. No.

Q. At the time that Mrs. Reddy was signing these documents did you discuss what they were?

A. No.

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial, and not binding upon the defendants Campbell and Benson, in the absence of a showing that either one of them was present at the time.

WITNESS.—No, I made the remark to her that there was no need of reading them over, as Mr. Campbell wouldn't send up anything that wasn't proper, and she was quite indignant and said "of course he wouldn't."

Mr. FRASER.—On behalf of the defendants Campbell and Benson I move to strike out the last statement of the witness as hearsay, immaterial and irrelevant, and a statement not made in the presence of either of the defendants.

Mr. CONKLIN.—Q. At the time you were signing these documents at Mrs. Reddy's house, what were you intending to sign?

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial, and calling for the conclusion and state of mind of the witness, and not any fact. This objection is made on behalf of the defendants Campbell and Benson.

WITNESS.—We supposed them to be deeds.

Mr. CONKLIN.—That is not answering the question. Don't say you supposed. What were you intending to sign?

A. Deeds.

(Testimony of Mrs. Mollie Conklin.)

A. Deeds for what? A. The Monache lands.

Q. Were those the same deeds that—or did you believe and [115—11] intend to sign deeds that were to be placed in escrow, in pursuance of the agreement you had made in Campbell's office?

A. Yes, they were to be placed in escrow.

Q. And did Mrs. Reddy make any statements at that time, and in your presence, in reference to those documents, as to their character?

Mr. FRASER.—I object to that, on behalf of the defendants Campbell and Benson, for the reason that any statement made by Mrs. Reddy in the absence of the defendants would not be evidence against them in this action.

A. No.

Q. (By Mr. CONKLIN.) Did she state at that time what she believed those documents to be?

Mr. FRASER.—That is objected to as incompetent, irrelevant, and immaterial, the belief of the party not being evidence or statement of any fact, on behalf of the defendants Campbell and Benson.

Mr. BLAKE.—The same objection for the Payette Lumber Co.

WITNESS.—No; when I made the remark to her that there was no need of us looking over them, she said of course there wasn't, that Campbell wouldn't send anything up that wasn't proper for us to sign; she said that Campbell wouldn't send anything up that wasn't perfectly right and proper for us to sign.

Judge RICHARDS.—Q. Who was it that said that? A. Mrs. Reddy.

(Testimony of Mrs. Mollie Conklin.)

Mr. CONKLIN.—Q. At the time you were signing those papers at Mrs. Reddy's, and at the time you signed those papers at your rooms in the Hotel Savoy, you state that you did not look them over. I will now ask you if you relied upon the fact that Mr. Campbell [116—12] had sent these documents to you, and believed them to be the documents you had therefore agreed upon?

Mr. FRASER.—That is objected to, on behalf of the defendants Campbell and Benson, first, as leading, second, as calling for nothing but a conclusion of the witness, and no statement of fact.

Mr. BLAKE.—The same objection on behalf of the Payette Lumber Company, and the further objection that it is self-serving.

WITNESS.—I certainly did.

Mr. CONKLIN.—Q. At the time you signed those instruments in the house of Mrs. Reddy, you say you didn't look the same over, but that you signed them? Why did you do that?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, and a self-serving declaration, and calls for no statement of fact, but the conclusion of the witness.

Mr. BLAKE.—The same objection.

Mr. FRASER.—My objections, without repeating it, are on behalf of the defendants Campbell and Benson.

WITNESS.—Because I relied on Mr. Campbell sending us nothing but what was proper to sign.

Mr. CONKLIN.—Had Mr. Campbell or Mr. Benson ever told you that they would send you any

(Testimony of Mrs. Mollie Conklin.)

papers other than the ones you had agreed upon at the meeting in Campbell's office, in 1900, at which this agreement or this negotiation was entered into? Did they ever tell you, or any of them, that they would send you other papers than those you had agreed upon at that time—the deeds?

A. No; deeds, I understood them.

Q. Had there been, at that meeting, or at any time afterwards, or before, or ever, any statement that they would send [117—13] to you any other papers than deeds to the Monache lands?

A. Never said anything.

Q. That can be answered by yes or no.

A. They were to send deeds up.

Q. That can be answered by yes or no. A. No.

Q. What was the understanding at that meeting as to whom you were selling the lands to?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, calling for the conclusion of the witness, and stating no fact.

WITNESS.—I was selling them to Benson.

Mr. CONKLIN.—Q. At that time was anything said whatever in regard to releasing these lands to the Government of the United States? A. No.

Q. Did you ever hear of such question?

A. No, I didn't.

Q. Was it stated to you, or at that meeting, that it was necessary in order to facilitate the sale of these lands, to release these lands, these Monache lands, to the Government of the United States? Was a power of attorney ever mentioned at that

(Testimony of Mrs. Mollie Conklin.)

meeting? A. No.

Mr. CONKLIN.—I will withdraw that last question, Mr. Reporter.

Mr. DAVIDSON.—Q. Mrs. Conklin, at the time of the meeting in Mr. Campbell's office, was anything said by Mr. Campbell or Mr. Benson in regard to your making applications for the selection of lieu lands for the base lands you were selling at that time? [118—14] A. No.

Q. Did they or did they not at that time ask you to permit Mr. Benson to take the deeds to this base land to the Government and relinquish them?

A. No.

Mr. FRASER.—Let me suggest, Mr. Davidson, that you say at what time. Do you claim that there was only one meeting there?

Mr. DAVIDSON.—Only one meeting.

Q Mrs. Conklin, that was the only meeting you had at Mr. Campbell's office in which Mr. Campbell and Mr. Benson were present, the meeting you just testified to?

A. That was the only meeting I was there at.

Q. That was the only meeting at which you were ever present? A. Yes.

Q. Now, at the time—how many times did you sign papers sent you by Mr. Benson or Mr. Campbell, or Campbell, Metson & Campbell, in regard to the Monache lands? A. Twice.

Q. Just the two times? A. Yes.

Q. Now, you say the first lot of papers was signed at the home of Mrs. Reddy? A. Mrs. Reddy.

(Testimony of Mrs. Mollie Conklin.)

Q. Did you at that time go before any notary public, for the purpose of acknowledging any papers that you signed at that time? A. No, sir.

Q. Was any notary public present at Mrs. Reddy's house at the time you were signing those papers?

A. No.

Q. Where were those papers left after you signed them? [119—15]

A. We left them on the table; when I left they were lying there.

Q. That would be in Mrs. Reddy's home?

A. Yes.

Q. How long after signing the papers at Mrs. Reddy's was it before you signed the papers at your rooms in the Savoy Hotel?

A. It wasn't very long after—maybe a day or two.

Q. Now, at the time of the signing of the papers in your room at the Savoy Hotel was any notary public present at that time? A. No, sir.

Q. Did you at that time, or at any other time, acknowledge before any notary public any paper that you signed at that time? A. No, sir.

Q. Did you ever, before any notary public, or any other officer authorized to take acknowledgments of conveyance to real estate, acknowledge the execution of any deeds relinquishing the Monache lands, or any part of the Monache lands to the United States Government? A. No.

Q. Did you, at the time of signing the papers at Mrs. Reddy's or at the time of signing the papers at your rooms at the Hotel Savoy, or at any

(Testimony of Mrs. Mollie Conklin.)

other time, acknowledge any powers of attorney authorizing any person to select lieu lands in your behalf for the Monache lands relinquished?

A. No.

Q. Did you ever, at any time, knowingly sign any power of attorney authorizing any person to convey any lieu lands selected for the Monache lands, relinquished and transferred to the United States of America? A. No.

Q. Now, Mrs. Conklin, you say the papers that you signed [120—16] at the Hotel Savoy were sent there through an office boy from the office of Campbell, Metson & Campbell? A. Yes.

Q. Was that boy that brought them known to you personally at that time?

A. I had seen him in their office.

Q. When you had seen him in their office what was he doing? A. He was just an office boy.

Q. Was he working there at that time, if you know?

A. I guess he was working there; I saw him there.

Q. Did you say they sent a man from the office of Campbell, Metson & Campbell, and took the papers from your room in the Hotel Savoy? A. Yes.

Q. Was that the same day, or afterwards?

A. I think it must have been the same day.

Q. Did you make an examination of the papers sent you by Campbell, Metson & Campbell, to your rooms at the Hotel Savoy? A. I did not.

Q. You may state why you signed those papers sent you at that time, without examining them.

Mr. FRASER.—That is objected to as incompe-

(Testimony of Mrs. Mollie Conklin.)

tent, irrelevant, and immaterial, and calling for a conclusion of the witness.

WITNESS.—Because I thought they wouldn't send anything but what was proper for me to sign.

Mr. DAVIDSON.—Q. Were you, at that time, relying upon the acts of your attorney, Mr. J. C. Campbell, in regard to the preparation of proper instruments for the purpose of conveying the Monache lands to John A. Benson, under the agreement had at the meeting to which you have testified?

Mr. FRASER.—Objected to as incompetent, irrelevant, and [121—17] immaterial, calling for the conclusion of the witness, and also for the further reason that there is no evidence that Mr. Campbell was her attorney at this time.

Mr. BLAKE.—The same objection, and the further objection that it is self-serving.

Q. (Last question repeated.)

A. I certainly was.

Q. Now, Mrs. Conklin, when did you first learn, if you did learn, that the Monache lands, or any part of them, had been conveyed to the United States Government?

A. It was quite a long time after. My son wrote to me. He said he—

Q. Yes. Do not tell what he said. From whom did you receive your first information as to the lands having been conveyed to the United States Government? A. My son.

Q. Now, previous to the time you learned of the conveyance to the Government, had you any conversation with Mr. Campbell, or with any member of the

(Testimony of Mrs. Mollie Conklin.)

firm of Campbell, Metson & Campbell, in regard to the payments to be made for the lands sold to Mr. Benson? A. They made two payments.

Q. About when did they make the first payment?

A. I couldn't say.

Q. How much was it, Mrs. Conklin?

A. They made two. One was for \$1250.00 and the other I think was \$1500.00.

Q. These payments were made to you by Campbell, Metson & Campbell?

A. Yes, it was sent from the firm.

Mr. FRASER.—I object to that. I don't wish to it in order—Which member of the firm of Campbell, Metson and Campbell? [122—18]

Mr. DAVIDSON.—Q. Mrs. Conklin, who made the payment that you testified to receiving at the office of Campbell, Metson & Campbell?

A. They sent for me to come down to the office; said they had some money for me.

Q. Who made the payment? Who handed you the money? A. I think it was Milton Bernard.

Q. Who was Milton Bernard?

A. He was an office boy, clerk there.

Q. For whom was he working?

A. He was working for Reddy, Campbell & Metson.

Q. Do you remember who made you the other payment?

A. I don't remember whether it was Milton Bernard or not.

Q. Was anyone present with you at the time you received the payments?

A. My daughter was with me once.

(Testimony of Mrs. Mollie Conklin.)

Q. Was anyone present at the other time?

A. Yes, but I don't remember who. I think Mrs. Reddy was with me once, but I am not positive.

Q. Now, were these payments made, if you remember, within ninety days after you signed the papers at your rooms and at Mrs. Reddy's?

A. I am not positive about that. I know after the last payment they told me that there would soon be another large payment.

Q. Did you ever ask Mr. Campbell, or any member of the firm of Campbell, Metson & Campbell as to where the papers signed by you were put in escrow, or where they were kept?

A. Yes, I went down once, Mrs. Reddy and I, when my son wrote that he heard they were not in escrow, heard something about it; she went down with me, and we saw Mr. Campbell, and he said they were in escrow; he was very indignant because we asked him. [123—19]

Q. At that time Mr. Campbell stated to you that the papers were in escrow?

A. Yes, and couldn't be taken out without the money being presented there for them.

Q. Mrs. Conklin, who did you—to whom were you selling the Monache lands under the agreement you had in the office of Campbell, Metson & Campbell, at the time in August or September, under the agreement made at that time?

Mr. FRASER.—That is objected to as incompetent, irrelevant and immaterial, and not the best evidence; the agreement itself is the best evidence to whom the sale was made.

(Testimony of Mrs. Mollie Conklin.)

Judge RICHARDS.—Mr. Davidson, can't it be understood that all of these objections go to all of the defendants, that an objection for any one is an objection for all?

Mr. DAVIDSON.—That is satisfactory.

Q. (Last question repeated by stenographer.)

WITNESS.—Mr. Benson.

Mr. DAVIDSON.—Q. Which Benson?

A. I don't know what his other name is.

Q. Do you remember whether it was John A. Benson?
A. John A. Benson, yes.

Q. Mrs. Conklin, how long after the agreement of August or September, 1900, did Mr. J. C. Campbell continue to act as your attorney in the matter of the sale of the Monache lands?

A. I think till after we found out the papers were not in escrow, my son, I think, took it into his own hands.

Q. (Last question read by stenographer, at the request of Mr. Davidson.)

A. It was some time after, I think; I can't tell positively.

Q. Did you afterwards withdraw the matter from the hands of Mr. Campbell?
A. Yes. [124—20]

Q. Who then acted as your attorney?

A. My son.

Q. N. E. Conklin?
A. N. E. Conklin.

Q. Now, Mrs. Conklin, who was to place the deeds to the Monache lands in escrow, under the agreement had at the office of Campbell, at the meeting in August or September?

A. I supposed Campbell and Benson.

(Testimony of Mrs. Mollie Conklin.)

Q. Was anything said—did you understand at that time that Mr. Benson was to place those deeds in escrow? A. Yes.

Mr. FRASER.—I object to that as calling for the conclusion of the witness and a statement of no fact.

WITNESS.—Campbell and Benson.

Mr. DAVIDSON.—Who, if anyone, was to see, under the terms of that agreement, that the deeds to be prepared and signed by you were to be placed in escrow?

A. I supposed Mr. Campbell.

Mr. FRASER.—I object to that, and move to strike it out as not responsive to the question, and calling for the conclusion of the witness, and as a statement of no fact.

Mr. DAVIDSON.—Q. Mrs. Conklin, you will be careful in answering not to say—if you know a fact positively, to leave out the word “suppose,” if you are testifying to a positive fact.

WITNESS.—It wasn't a fact; he didn't put them in escrow.

Mr. DAVIDSON.—Q. Well, but who was to put the deeds in escrow, or see that they were put in escrow? A. He was.

Q. Who? A. Mr. Campbell. [125—21]

Q. Mrs. Conklin, how long did you continue to stay in the City of San Francisco, California, after the time that you signed the papers at your rooms, and also at the house of Mrs. Reddy, when the agreement was made?

A. I left somewhere about the 1st of December, 1st or 2d of December, 1900.

(Testimony of Mrs. Mollie Conklin.)

Q. Where did you go at that time?

A. Bakersfield.

Q. What State? A. California.

Q. How long did you stay in Bakersfield?

A. I stayed there all winter.

Q. When did you next return to San Francisco?

A. It was late the next summer.

Q. About what month, if you remember?

A. It might be August or September.

Q. 1901? A. 1901.

Q. Now, Mrs. Conklin, were you in the City or County of San Francisco between the 1st or 2d of December, 1900, and say the month—the 1st of August, 1901? A. No.

Q. During all that period you were continuously absent from the City and County of San Francisco, State of California? A. I was.

Q. Have you ever received any payment on the purchase price of the Monache lands other than the two payments you have testified to?

A. No, no others.

Mr. DAVIDSON.—I will have this paper marked Complainant's Exhibit "B," for identification. (Marked.) [126—22]

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you a paper marked Complainant's Ex. "B.," for identification, being an account between Mollie Conklin, executrix of the estate of Alvah Russel Conklin, deceased, and the firm of Reddy, Campbell & Metson. You may examine this paper and state, if you know, what it is, and whose signature it is that marks the bill as paid. A. Yes, I do.

(Testimony of Mrs. Mollie Conklin.)

Q. Did you know at that time a Mr. Jacobs?

A. Yes.

Q. What position did he occupy, if you know, at that time, with the firm of Reddy, Campbell & Metson?

A. He was the chief clerk.

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "B," the instrument identified by the witness.

Mr. FRASER.—I object to it as incompetent, irrelevant and immaterial, not tending to prove any of the allegations of the complaint.

Mr. DAVIDSON.—Q. Did you, at the time of receiving that, pay to the firm of Reddy, Campbell & Metson the balance of \$256.90 shown by that?

A. I did.

Q. And that is a receipted bill for the money you paid them at that time?

A. Yes.

Mr. DAVIDSON.—At this time the complainants demand of the defendants the production of the original powers of attorney as set forth and described in the bill of complaint of the complainants Mollie Conklin and the United States of America, and as referred to in the separate answers of each of the defendants. [127—23]

Mr. BLAKE.—Do you know how many of those there are?

Mr. DAVIDSON.—We ask for the production of eleven powers of attorney, containing a description of the base lands surrendered to the United States in lieu of which the lands involved in this action were selected in the name of the complainant Mollie Conklin and Emily M. Reddy and Edward A. Reddy,

(Testimony of Mrs. Mollie Conklin.)

executrix and executor of the estate of Patrick Reddy, deceased.

Mr. BLAKE.—There are only ten of them there (handing papers to Mr. Davidson).

Mr. DAVIDSON.—Do you know whether or not you claim another power of attorney, Mr. Blake?

Mr. BLAKE.—I wouldn't know, without checking up.

Mr. DAVIDSON.—There are eleven on the records.

Mr. BLAKE.—That is probably lost or misplaced.

Mr. DAVIDSON.—We have certified copies here. We just want to examine these. Suppose we do this: Submit to the witness the originals and have them marked, with the understanding that when they have been marked and put in, the certified copies may be substituted.

Mr. FRASER.—I think, Mr. Davidson, you had better mark the certified copies, because you will get the record rather mixed up if you don't. You can interrogate the witness on the originals and then offer in evidence the certified copies.

Mr. DAVIDSON.—Very well. We will have those marked as Complainant's Exhibit "C," to the end.

(Marked Complainant's Ex. "6" to Complainant's Ex. "M.," inclusive.)

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "C," the certified copy of the original power of attorney, certified by the recorder. We offer these powers of [128—24] attorney—I want this statement to go in in connection with the offer—not for the purpose of proving that they are

(Testimony of Mrs. Mollie Conklin.)

valid powers of attorney, but for the purpose of proving that they are forged and fraudulent powers of attorney, that they were not knowingly signed by the complainant Mollie Conklin, that they were not acknowledged by her, and that they are instruments that were altered and changed after delivery and signing by Mollie Conklin.

Judge RICHARDS.—You say you offer these for that purpose?

Mr. DAVIDSON.—For that purpose.

Judge RICHARDS.—We object to that, because the instruments don't show anything of that kind.

Mr. FRASER.—We object to the introduction of the exhibits, under the statement of counsel, as incompetent irrelevant and immaterial, and as improper to introduce an instrument for that purpose, or confined to any one purpose, because the instrument speaks for itself, and, if introduced in evidence, it must have such force and effect as it is legally entitled to.

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you Complainant's Exhibit "C," purporting to be a power of attorney from Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. N. Cobban. You may examine the same and state whether or not you ever knowingly signed this power of attorney.

Mr. FRASER.—We object to the question for the reason that the word "knowingly" is put in the question. It hasn't been proven that the witness is incompetent to understand.

WITNESS.—No, I never did.

(Testimony of Mrs. Mollie Conklin.)

Mr. FRASER.—I suppose that answers the question that she never “knowingly” did. [129—25]

Mr. DAVIDSON.—Yes.

Q. Is that signature, “Mollie Conklin,” to that instrument your signature, Mrs. Conklin?

A. It looks like it. I wouldn’t swear to it though.

Q. Were you acquainted with the person, R. M. Cobban, of Missoula, in the county of Missoula, State of Montana, the attorney in fact mentioned in this instrument? A. No.

Q. Did you ever meet R. M. Cobban? A. No.

Q. Did you ever knowingly appoint him as your attorney in fact for any purpose?

Mr. BLAKE.—We object to the word “knowingly” in that.

Mr. FRASER.—We object to it as incompetent, irrelevant and immaterial, and move to have the answer stricken out as incompetent, irrelevant and immaterial, for the further reason that this witness hasn’t been shown to be incompetent, or not to have sufficient intelligence to know the contents of the instrument.

Mr. DAVIDSON.—Q. Mrs. Conklin, did you ever appoint R. M. Cobban, of Missoula, county of Missoula, State of Montana, your attorney in fact for any purpose?

Mr. FRASER.—That is objected to as calling for the conclusion of the witness and as incompetent, irrelevant and immaterial. The document itself is the best evidence.

WITNESS.—No.

Mr. DAVIDSON.—Q. Mrs. Conklin, did you ever receive any consideration from R. M. Cobban for

(Testimony of Mrs. Mollie Conklin.)

appointing him as your attorney in fact under this power of attorney, Complainant's Exhibit "C"? [130—26]

Judge RICHARDS.—Objected to because it does not appear that she might not have received it from someone else for his benefit.

Mr. FRASER.—And for the further reason that it doesn't require any consideration for the appointment of an attorney in fact.

WITNESS.—No.

Mr. DAVIDSON.—Q. Mrs. Conklin, I call your attention to that part of the power of attorney which reads as follows: "For value received, the receipt whereof is hereby acknowledged, this power of attorney is hereby made and declared to be irrevocable by us or otherwise." You may state whether or not you ever received any value for the execution of this power of attorney, Complainant's Exhibit "C."

Mr. FRASER.—Objected to as incompetent, irrelevant and immaterial, and for the reason that it is not necessary for a valid power of attorney that any compensation or consideration be paid.

WITNESS.—I never did.

Mr. DAVIDSON.—Q. Mrs. Conklin, the power of attorney shows on its face that it was signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover. You may state whether or not you ever signed this instrument in the presence of those two parties just named as subscribing witnesses.

Mr. BLAKE.—Objected to as incompetent, irrelevant and immaterial, no witnesses being required.

WITNESS.—No.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. Are you acquainted with J. H. Lavenson and C. E. Glover, or either one of them? [131—27] A. No, I never heard of them.

Q. Did you ever see either one of these parties?

A. I did not.

Q. Mrs. Conklin, where were you on the 13th day of February, 1901, the date of this power of attorney, Complainant's Exhibit "C"?

A. I was in Bakersfield.

Q. What state? A. California.

Q. Mrs. Conklin, are you acquainted with George A. Young, a notary public in and for the City and County of San Francisco, State of California?

A. No, sir.

Q. Did you ever meet George A. Young, a notary public in San Francisco?

A. No, never heard of him.

Q. You may state whether or not, on the 12th day of February, 1901, or at any other time, you ever acknowledged this instrument, Complainant's Exhibit "C," before George A. Young, a notary public in and for the City and County of San Francisco, State of California. A. I never did.

Judge RICHARDS.—That is objected to as incompetent, irrelevant and immaterial, it not being necessary to the validity of a power of attorney that it should be acknowledged.

WITNESS.—I never did.

Mr. DAVIDSON.—Q. Where were you on the 12th day of February, 1901?

A. I was in Bakersfield.

Q. California? A. California. [132—28]

(Testimony of Mrs. Mollie Conklin.)

Q. Were you, on that date—at any time on that date—in the City and County of San Francisco, State of California? A. No, sir.

Mr. FRASER.—Do you desire to have the same line of questions and answers apply to all of these exhibits, instead of repeating them?

Mr. DAVIDSON.—You don't want to deprive us of practice, do you?

Mr. FRASER.—We can stipulate that the answers of the witness would be the same as to the others, when you get one of these full enough.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "D," a certified copy of power of attorney.

Judge RICHARDS.—He objects to it, under the statement of counsel, setting forth the purpose for which it is offered.

Mr. DAVIDSON.—Then it is understood that all of the offers of powers of attorney are for the same purposes and subject to the same objections.

Mr. DAVIDSON.—I will withdraw that for the present, and take this up.

Q. Mrs. Conklin, did you ever authorize R. N. Cobban, of Missoula, County of Missoula, State of Montana, or any other person, to insert the name of R. M. Cobban as attorney in fact under the power of attorney, Complainant's Exhibit "C"? A. No.

Q. Did you ever authorize the defendant John A. Benson to insert the name of R. M. Cobban, or any other person, as the attorney in fact of any powers of attorney signed by you, knowingly, or otherwise?

(Testimony of Mrs. Mollie Conklin.)

A. No.

Mr. DAVIDSON.—We now offer Exhibit “D,” for the same purpose as stated heretofore. [133—29]

Judge RICHARDS.—We object to it, under the purpose stated by counsel for which the instrument is offered, for the reason that the offer cannot limit and restrict the purpose of testimony in that manner.

Mr. DAVIDSON.—Q. Mrs. Conklin, I hand you power of attorney, marked Complainant’s Exhibit “D.” You may examine the same and state whether or not you ever signed that instrument.

A. No, I did not.

Q. You say you never signed it?

A. Not to my knowledge.

Q. You may examine the signature, “Mollie Conklin,” to that instrument, and state whether or not that is your signature.

A. It looks like it, but I wouldn’t swear it was.

Q. If that is your signature, Mrs. Conklin, did you knowingly sign the same? A. I did not.

Q. Did you sign the instrument?

A. Not knowingly. I wouldn’t swear to it. I have seen writing so much like mine that I wouldn’t swear to it.

Q. Did you ever appoint R. M. Cobban, of Missoula, County of Missoula, State of Montana, attorney in fact, under the power of attorney marked Complainant’s Exhibit “D”?

A. No.

Judge RICHARDS.—Objected to as incompetent, for the reason that it is calling for a conclusion of

(Testimony of Mrs. Mollie Conklin.)

the witness and not stating a fact.

Mr. FRASER.—And for the further reason that the document itself is the best evidence of the fact as to whether he was appointed her attorney or not.

WITNESS.—No. [134—30]

Mr. DAVIDSON.—Q. Mrs. Conklin, if you signed the power of attorney marked Complainant's Exhibit "D," state fully the circumstances and conditions under which you signed the same, that is, if you know that you signed the power of attorney, Exhibit "D."

(No answer.)

Mr. DAVIDSON.—I will withdraw that question.

Q. Mrs. Conklin, are you acquainted with C. E. Glover and J. H. Lavenson, whose names are signed as witnesses to the power of attorney. A. No.

Q. Did you ever sign this power of attorney in the presence of said C. E. Glover and J. H. Lavenson, or either of them? A. No.

Q. I will ask you, Mrs. Conklin, whether or not, in the State of California, in the County and City of San Francisco, on the 27th day of September, 1900, you acknowledged this power of attorney in the presence of, or before Holland Smith, notary public, in and for the city and county of San Francisco, State of California? A. No.

Judge RICHARDS.—Objected to as incompetent, irrelevant and immaterial, and for the further reason that it is not necessary to the validity of a power of attorney that it should be acknowledged.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. You may state whether or not you received any value, or any other consideration for the execution of this power of attorney marked Complainant's Exhibit "C," as a consideration for making the same irrevocable.

Judge RICHARDS.—Objected to as irrelevant and incompetent, [135—31] for the reason that the question of consideration does not enter into the validity of a power of attorney.

WITNESS.—I never did.

Mr. DAVIDSON.—At this time we will ask that all of the original powers of attorney be marked in lieu of the certified copies, and put in evidence, for the purpose of showing that the said powers of attorney have been added to and altered and changed after they were signed, acknowledged and certified to by the notary public, and for the purpose of showing that the name of R. M. Cobban, as attorney in fact, was inserted after its apparent acknowledgment by the complainant Mollie Conklin, and for the further purpose of showing that the said original powers of attorney are bogus, false and forged instruments, and are not the legally executed powers of attorney of the complainant Mollie Conklin herein.

Judge RICHARDS.—We object, as only two of such powers of attorney have been identified.

Mr. DAVIDSON.—I ask to have them marked as complainant's exhibits, with the stipulation that the examination, having been based upon the original

(Testimony of Mrs. Mollie Conklin.)

power of attorney, that all questions asked on the original Exhibit "C" shall apply to the original copy.

Mr. BLAKE.—And also all objections.

Mr. FRASER.—And that the answers of the witness shall be considered as the answers of the witness to the other exhibits.

(Marked Complainant's Exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," and "L.")

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "E," power of attorney of Mollie Conklin, and Edward A. Reddy and Emily M. Reddy, administrator and administratrix [136—32] of the estate of Patrick Reddy, deceased, to R. M. Cobban, dated the 28th day of February, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, and purporting to be acknowledged on the 28th day of February, 1901, before Thomas S. Barnes, notary public in and for the City and County of San Francisco, recorded the 28th day of June, 1901, in book 2 of powers of attorney, at page 365 of the records of Boise County, Idaho.

We offer in evidence now, as Complainant's Exhibit "F," power of attorney of Mollie Conklin, and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the third day of April, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover,

(Testimony of Mrs. Mollie Conklin.)

and acknowledged on the third day of April, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of California, recorded the 19th day of April, 1901, in book 2 of powers of attorney, at page 355 of the records of Boise County, Idaho.

We now offer in evidence, as Complainant's Exhibit "G," power of attorney from Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the first day of March, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, acknowledged the first day of March, 1901, before George A. Young, a notary public in and for the City and County of San Francisco, State of California, recorded on the 14th day of March, 1901, in book 2 of powers of attorney, at page 342, of the records of Boise County, Idaho. [137—33]

We offer in evidence, as Complainant's Exhibit "H," power of attorney of Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the 28th day of February, 1901, signed, sealed and delivered in the presence of C. E. Glover and B. McGillan, acknowledged on the 28th day of February, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of Cali-

(Testimony of Mrs. Mollie Conklin.)

fornia, recorded the 18th day of September, in book 2 of powers of attorney, at page 384 of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "I," power of attorney of Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the first day of March, 1901, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, acknowledged on the first day of March, 1901, before Geo. A. Young, a notary public in and for the City and County of San Francisco, in the State of California, and recorded the 14th day of March, 1901, in book 2 of powers of attorney, at page 338 of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "J," a power of attorney from Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the thirteenth day of February, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and C. E. Glover, acknowledged [138—34] on the 12th day of February, 1901, before George A. Young, a notary public in and for the City and County of San Francisco, State of California, recorded in book 2 of powers of attorney, at page 353 of the records of Boise County, Idaho.

(Testimony of Mrs. Mollie Conklin.)

We offer in evidence, as Complainant's Exhibit "K," power of attorney from Mollie Conklin and Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, in the County of Missoula, State of Montana, dated the 26th day of September, 1900, signed, sealed and delivered in the presence of C. E. Glover and J. H. Lavenson, and acknowledged on the 26th day of September, 1900, before Holland Smith, a notary public in and for the City and County of San Francisco, State of California, recorded March 23d, 1901, in book 2 of powers of attorney, at page 349, of the records of Boise County, Idaho.

We offer in evidence, as Complainant's Exhibit "L," power of attorney of Mollie Conklin, Edward A. Reddy and Emily M. Reddy, administrator and administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, in the County of Missoula, State of Montana, dated the 26th day of September, 1900, signed, sealed and delivered in the presence of C. E. Glover and J. M. Lavenson, acknowledged on the 26th day of September, 1900, before Holland Smith, a notary public in and for the City and County of San Francisco, State of California, recorded on the 23d day of March, 1901, in book 2 of powers of attorney, at page 351.

We offer these powers of attorney for the same purposes as stated on the introduction and offer of Complainant's Exhibit "C."

Mr. BLAKE.—The same objection. [139—35]

(Testimony of Mrs. Mollie Conklin.)

Judge RICHARDS.—The same objection.

Mr. DAVIDSON.—I will say, gentlemen, that in changing these papers there was a mix-up, in the first two, so that the questions would not be properly applicable to the two marked Exhibit “C” and “D.”

We further offer Complainant’s Exhibit “C” for the purpose of showing that said instrument has been mutilated since its execution and delivery by the erasure of the name of one of the parties from said instrument, particularly the name of Edward A. Reddy.

Mr. BLAKE.—We object to the purpose for which you offer this.

Mr. DAVIDSON.—We will want to add the other exhibit, which we will select here as the one which is admissible, and let that be offered before the objection, so that the objection will go to all of them.

At this time an adjournment was taken until 2 P. M., at which time, pursuant to adjournment, the taking of testimony was resumed.

Mr. DAVIDSON.—We offer this certified copy, gentlemen, as Complainant’s Exhibit “M,” certified copy of power of attorney, in the body thereof purporting to be between Mollie Conklin and Emily M. Reddy, sole administratrix of the estate of Patrick Reddy, deceased, to R. M. Cobban, of Missoula, County of Missoula, State of Montana, dated the 16th day of September, 1901, signed, sealed and delivered in the presence of J. H. Lavenson and B. McGillan, and acknowledged on the 16th day of Sep-

(Testimony of Mrs. Mollie Conklin.)

tember, 1901, before Thomas S. Barnes, a notary public in and for the City and County of San Francisco, State of California, recorded on the 7th day of December, 1901, in book 3 of powers of [140—36] attorney, at page 31, of the records of Boise County, Idaho.

Judge RICHARDS.—We raise no objection to this as a copy, but object to the restriction in the purpose stated for which it is offered.

Mr. DAVIDSON.—The offer is made subject to the same limitations and purposes stated in the offer of the other exhibits.

It was here stipulated by and between counsel for the complainants and the defendants that all of the questions asked the witness Mollie Conklin as to Complainant's Exhibits "C" and "D," and all answers made by her in response to such questions, and all objections made by counsel for the defendants as to the competency, relevancy or admissibility of any such testimony shall be deemed by all the parties to apply fully to each of the exhibits "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "M," as though said questions were severally propounded to said witness upon each of said exhibits and the answers made thereto as to the said exhibits "C" and "D."

And it was further stipulated by and between counsel for the complainants and the respective defendants herein that the lieu lands described in paragraph seven of the amended complaint of the complainant Mollie Conklin herein were patented by the

(Testimony of Mrs. Mollie Conklin.)

United States of America in the name of Mollie Conklin and Emily M. Reddy and Edward A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, by patent numbers and of the dates as follows, to wit:

Patent No. 4501, dated August 20, 1902.

Patent No. 4511, dated August 28, 1902.

Patent No. 4513, dated September 15, 1902. [141—37]

Patent No. 4512, dated August 20, 1902.

Patent No. 4507, dated August 20, 1902.

Patent No. 4510, dated August 20, 1902.

Patent No. 4509, dated September 15, 1902.

Patent No. 4508, dated August 20, 1902.

Patent No. 4502, dated August 23, 1902.

Patent No. 4503, dated August 20, 1902.

Patent No. 4734, dated September 15, 1902.

Patent No. 4778, dated September 15, 1902.

Patent No. 4326, dated September 15, 1902.

Patent No. 4777, dated September 15, 1902.

Patent No. 4776, dated September 15, 1902.

Patent No. 4774, dated September 15, 1902.

Patent No. 4785, dated September 15, 1902.

Patent No. 4780, dated September 15, 1902.

Patent No. 4773, dated September 15, 1902.

Patent No. 4775, dated August 20, 1902.

Patent No. 4514, dated July 22, 1902.

Mr. DAVIDSON.—Gentlemen, will there be any objection if the Judge leaves the room?

Mr. BLAKE.—None whatever.

Mr. DAVIDSON.—Suppose we have him swear

(Testimony of Mrs. Mollie Conklin.)

Mrs. Olcese before he goes.

The Examiner thereupon administered the oath to Mrs. M. C. Olcese, and left the room.

Mr. DAVIDSON.—Q. Mrs. Conklin, are you acquainted with the defendant R. M. Cobban?

A. No, sir.

Q. Did you ever meet the defendant R. M. Cobban? A. No, sir. [142—38]

Q. Did you ever have any communication or any correspondence with the defendant R. M. Cobban?

A. No.

Q. Are you acquainted with the defendant E. B. Weirick, sued individually and also as trustee?

A. No, sir.

Q. Did you ever meet said defendant E. B. Weirick? A. No.

Q. Did you ever have any correspondence with him, or communication from him? A. No.

Q. Did you ever receive any consideration for the base lands or the lieu lands described in your complaint from either of the defendants E. B. Weirick or R. M. Cobban? A. No.

Q. Have you ever returned, or offered to return, to the defendant John A. Benson the money paid by him, amounting to \$2,750.00, paid by him to you on the purchase of the Monache lands? A. No.

Q. You did not personally make any such offer?

A. No.

Q. Mrs. Conklin, after you first learned of the existence of the powers of attorney offered in evidence herein, and of the fact that the deeds signed by you

(Testimony of Mrs. Mollie Conklin.)

had been placed of record relinquishing the Monache lands to the United States Government, what, if anything, did you do with reference to giving notice that you repudiated the powers of attorney that existed and the deeds filed for record relinquishing the lands to the United States Government?

A. I turned the business over to my son. [143—39]

Q. When you learned that, your son then acted for you in all those matters? A. Yes.

Q. Mrs. Conklin, did you ever deliver, or authorize anyone to deliver for you, any deeds relinquishing the Monache lands as base lands to the United States Government? A. No.

Q. Did you ever deliver, or authorize anyone to deliver, any powers of attorney executed by you, or claimed to be executed by you, for the sale and disposal of lieu lands selected on the base lands relinquished to the United States? A. No.

Q. Mrs. Conklin, are you ready and willing and able to pay, to return, the \$2,750.00 heretofore paid by Mr. Campbell on account of the defendant John A. Benson to you on the purchase price of the Monache lands?

Mr. FRASER.—I object to that for the reason that it assumes a state of facts not proven by the record, and that is that J. C. Campbell paid her any money at all in payment for these lands.

(The last question was read by the stenographer, at the request of Mr. Davidson.)

WITNESS.—I would rather have the money, the

(Testimony of Mrs. Mollie Conklin.)

purchase price of the land.

Mr. DAVIDSON.—Q. To secure either the original base lands or the lieu lands selected therefor, are you ready, able and willing, upon securing either the original base lands or the lieu lands, to pay to the defendant John A. Benson, or to any defendant entitled thereto, the \$2,750.00 paid by Mr. Campbell to you on the purchase price of the base lands?

WITNESS.—I don't understand, exactly. [144—40]

Mr. DAVIDSON.—I will change that.

Q. —or known as the Monache lands?

A. Yes, I would be willing to take the land back.

Mr. FRASER.—I object to that as based upon a state of facts not shown by the record; there is no evidence in the record that it was paid by J. C. Campbell.

WITNESS.—I would be willing to take the land back.

Mr. DAVIDSON.—Q. If you could get back the original Monache lands, Mrs. Conklin, are you able, ready and willing to repay any and all moneys received by you heretofore on the purchase price of the lands?

Mr. FRASER.—I object to that as incompetent, irrelevant and immaterial, and not a proper tender into court of the money, or rescission of any contract, and therefore improper and immaterial and incompetent.

WITNESS.—If I got the land back, yes. I would be willing to pay the money back.

(Testimony of Mrs. Mollie Conklin.)

Mr. DAVIDSON.—Q. Are you able to pay back at this time any or all moneys heretofore paid you?

A. I don't know whether I would be, just now. It would be a scratch.

Q. Can you raise the money, Mrs. Conklin—I will withdraw that last question.

Mr. DAVIDSON.—Mr. Reporter, you may mark these papers as Complainant's Exhibits "N" and "N-1" for identification. (Marked papers.)

Q. Mrs. Conklin, I hand you Complainant's Exhibit "N," for identification, being a letter on the letter head of Campbell, Metson & Campbell, Attorneys at Law, San Francisco, California, dated December 11, 1901, addressed [145—41] to Mrs. A. R. Conklin, at Bakersfield, California, and signed J. C. Campbell. You may examine this letter and state whether or not you ever received the same, and, if so, how, and if you knew whose handwriting the signature is in, at the bottom there, the signature of J. C. Campbell. A. Yes, I received the letter.

Q. How did you receive it—by what name?

A. Through the mail.

Q. Do you know whose handwriting the name J. C. Campbell is in? A. Yes.

Q. Whose? A. J. C. Campbell's.

Q. The defendant herein? A. Yes.

Q. You received that regularly through the United States mail, did you, Mrs. Conklin? A. I did.

Q. Now, I will hand you paper marked Complainant's Exhibit "N-1" for identification, a letter written on the paper of John A. Benson, San Francisco,

(Testimony of Mrs. Mollie Conklin.)

California, dated December 11, 1901, addressed to Honorable J. C. Campbell, and signed John A. Benson. You may examine the same and state how the same came into your possession.

A. Through the mail, from Mr. Campbell.

Q. You may state whether or not that is the letter referred to in the letter from J. C. Campbell, marked Complainant's Exhibit "N," for identification.

A. Yes.

Q. And you received that through the United States mail at the same time you received Exhibit "N"? A. Yes. [146—42]

Mr. DAVIDSON.—We now offer in evidence, as Complainant's Exhibit "N," the letter identified by the witness, from J. C. Campbell, bearing date December 11, 1901, and addressed to Mrs. A. R. Conklin, Bakersfield, California.

We also offer in evidence, as Complainant's Exhibit "N-1," the letter on the stationery of John A. Benson, dated at San Francisco, California, dated December 11, 1901, addressed to Hon. J. C. Campbell, and signed John A. Benson, identified by the witness.

Mr. FRASER.—We object to the introduction of Exhibit "N-1," for the reason that no proper foundation has been laid for the introduction of the same.

Mr. DAVIDSON.—We will read the letters into the record.

Mr. FRASER.—You may consider them read.

Mr. DAVIDSON.—Reading Complainant's Exhibit "N":

Complainants' Exhibit "N."

“Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL.

Attorneys at Law,
115 to 122 Crocker Building,
San Francisco.

December 11, 1901.

Mrs. A. R. Conklin,
Bakersfield, Cal.

Dear Madam:

Enclosed please find letter which I have just received from Mr. Benson, which explains the situation exactly. I had quite a talk with him over the 'phone, and he says that if you can get anyone to take this land at \$4.00 an acre in its present situation, and do better than he can, he is willing to give it up. If you or your sons think you can handle this land better than it is being handled now, I suggest that you purchase Mrs. Reddy's interest in it and pay for the same, and then you can handle [147—43] it to suit yourselves, without any interference by the Courts or anyone else. Probably you can work this through the people who are so anxious to buy the land at the present time. At present I can see nothing better than to let Benson work it out, as it seems to have gotten into a snarl. It seems that we cannot get the deeds back from the Government, and have not yet been able to have them approve the selections. This being the fact, we are willing to do anything we can

to facilitate the matter, and as I have said before, if the people whom you have in view will purchase this land in this situation, we would be willing to let them have it at once.

Yours,

J. C. CAMPBELL.

Enc.”

Reading Complainant's Exhibit “N-1”:

Complainants' Exhibit “N-1.”

“John A. Benson,
Engineer, Land Agent, Dealer in Land Scrip.
Lands Located and Titles Secured Without Settlement.

507 Montgomery St., San Francisco, Cal.
Branch Office: Ernest A. Benson, Manager,
240 Bradbury Block, Los Angeles,
Cal.

San Francisco, Cal., December 11th, 1901.

Hon. J. C. Campbell,

Dear Sir:

Agreeable to your request made to me this morning, I submit the following statement regarding the Forest Reserve basis which you placed in my hands for disposition belonging to Mollie Conklin and the Reddy Estate.

All of the land, except 400 acres, has been deeded to the United States, and deeds placed upon record, and selections made of other lands in accordance with the provisions of the Act of Congress of June 4, 1897 (30 Stats., 36). [148—44]

This was all, or nearly all, located for parties who

were desirous of securing title to unoccupied government lands of the United States, under the provisions of contracts or agreements which in terms provided that after the land selected in lieu of the land surrendered had been located and said location had been accepted by the Commissioner of the General Land Office, and proper evidence furnished thereof, that the parties in whose interests the locations were made would, upon the delivery of a deed conveying the right of the owners, pay the amounts agreed upon.

Up to the present date there has not been a single location accepted by the Commissioner of the General Land Office. It is my intention just as soon as these acceptances can be had to ask for a confirmation of the sales by the Court so that settlement can be made to both the owners and the parties in whose interests the locations were made. We have been bringing every effort to bear to get the Commissioner of the General Land Office to act upon these matters, and as he has lately added several to the working force in his office it is likely we will not have very much longer to wait.

I can cite a case—a location wherein you are interested—wherein the locations were made long prior to these; that is the locations made for Mr. L. R. Hanchett, lying partly in this State, in the Independence District, and partly in the State of Nevada. Those in the Independence District have recently been approved, while those in Nevada have not yet been reached.

The Commissioner also refuses to allow the withdrawal of selections already made until the present

(Testimony of Mrs. Mollie Conklin.)

ones are acted upon, giving as a reason in similar instances, that the locator might desire to select more valuable lands than those selected at present.

[149—45]

At the time those locations were made there was little or no sale for Forest Reserve direct except upon the condition that it were accepted by the Commissioner of the General Land Office. At present if we could only get back the deeds given to the United States there would be little difficulty in disposing of the land.

I have employed counsel specially at Washington to try and secure these approvals, and just as soon as obtained, so as to get confirmation of sales will report promptly.

I regret exceedingly these complications, but I had no reason to expect them, as at the time the locations were made approvals were progressing rapidly. I have many times this amount of locations in my own business delayed in a similar manner.

Very respectfully,

JOHN A. BENSON."

Mr. DAVIDSON.—That is all at present.

Cross-examination.

(By Mr. FRASER.)

Q. Mrs. Conklin, these lands described in this bill of complaint were owned by your husband at one time, were they not?

A. By my husband and Mr. Reddy.

Q. They were owned by Mr. Reddy and your husband? A. Yes.

(Testimony of Mrs. Mollie Conklin.)

Q. Did your husband not have title to them alone for awhile? Was he not the sole owner of them first from the Government?

A. I don't know whether he was or not.

Q. Where did Mr. Reddy get his interest in these lands—from whom, if you know?

A. He got it from my husband.

Q. Mr. Reddy got his interest from your husband?
[150—46]

A. They were in partnership at the time it was bought.

Q. Then, Mr. Reddy had a half interest, did he, with your husband? A. Yes.

Q. What relation existed between your husband and Mr. Reddy?

A. My husband's sister was married to Mr. Reddy.

Q. They were brothers in law? A. Yes.

Q. Did Mr. Reddy die before your husband, Mrs. Conklin, or afterwards? A. Afterwards.

Q. When was the first meeting that you had in which the sale of this land to Benson was discussed—where was that meeting held?

A. In Mr. Campbell's office.

Q. That was in August or September, 1909, was it?

A. Somewhere about there; I couldn't tell exactly the date.

Q. Who asked you to go to Mr. Campbell's office at that time, or to Campbell, Metson & Campbell's office?

A. I don't remember; they let me know some way.

Q. You don't know who informed you of that meet-

(Testimony of Mrs. Mollie Conklin.)

ing or asked you to be present?

A. No, I don't; I suppose they telephoned from the office; I don't remember.

Q. Who went with you when you went down to the office, do you remember? A. My son.

Q. Mr. Norman Conklin?

A. Norman Conklin.

Q. He is the gentleman that is present here to-day as one of your attorneys? A. Yes, sir. [151—47]

Q. Mr. Norman Conklin was an attorney at law at that time, was he?

A. No, he hadn't been practicing; he hadn't practiced at all.

Q. Was he admitted to the bar at that time?

A. Yes, I think he had been.

Q. Did you meet Mrs. Reddy there?

A. Mrs. Reddy was there.

Q. Who else was present at that meeting besides yourself and Mrs. Reddy and Mr. Norman Conklin?

A. Mr. Benson, Mr. Campbell, and Mrs. Coleman, my son and myself.

Q. Is that all that were present at that time?

A. Yes.

Q. What time of the day was it, do you remember—forenoon or afternoon?

A. I think it was afternoon.

Q. Did you know what you were going down to that office about, the business you were going to discuss when you got there, Mrs. Conklin? A. Yes.

Q. It had been talked to you some time prior to this time about the sale of the land, had it?

(Testimony of Mrs. Mollie Conklin.)

A. Yes, I had talked to Mr. Reddy about it before he died.

Q. I believe Mr. Reddy had an agreement with Mr. Benson for the sale of the land before his death, had he not?

A. I think he had; he said he had seen Mr. Benson.

Q. And Mr. Reddy had talked to you about the sale of it? A. Yes.

Q. So after Mr. Reddy died then was the time you had this meeting in the office of Campbell, Metson & Campbell? A. Yes. [152—48]

Q. And you knew at the time you went down there that the matter to be discussed was the sale of this land that your husband and Mr. Reddy had owned?

A. Yes.

Q. How long was it before this meeting that Mr. Reddy had talked to you about the sale of this land?

A. He died in June, and it was while he was sick.

Q. Probably along in June some time?

A. Well, yes—it was before June; in June he was very sick. Several times, whenever I would go in the room, he would talk about it; he was very anxious to sell it and get the money.

Q. Did he tell you who he was going to sell it to?

A. He spoke about selling it to Benson, yes.

Q. The same Benson who is mentioned in this complaint? A. Yes.

Q. And it was for the purpose of carrying out that agreement that you went down to this office of Campbell, Metson & Campbell? A. Yes.

Q. That was your object in going there?

(Testimony of Mrs. Mollie Conklin.)

A. Yes.

Q. Now, Mr. Campbell wasn't your personal attorney, was he, Mrs. Conklin?

A. Yes, they had acted for us.

Q. Had you paid him any retainer in this particular matter?

A. No, I hadn't paid him any retainer, but I paid the firm for what they had done.

Q. You paid them as shown by this receipt which you have introduced in evidence? A. Yes.

[153—49]

Q. That is the only payment that you made to them, is it, what you got this receipt for? A. Yes.

Q. And the services you paid them for are the services that are mentioned in this receipt? A. Yes.

Q. Outside of that you didn't pay them anything, did you, Mrs. Conklin?

A. They had done work for my daughter.

Q. I am asking for you, individually?

A. No, not for me; they had for my husband.

Q. They had done work for your husband?

A. Yes, for him.

Q. And after the death of your husband, the only retainer or moneys that you paid in to Mr. Campbell or the firm of Campbell, Metson & Campbell was as shown by this receipt which you have introduced in evidence? A. Yes.

Q. Now, when you got to the office that afternoon, this matter was discussed, about the sale of the land to Mr. Benson, was it, among all of you?

(Testimony of Mrs. Mollie Conklin.)

A. No; Mr. Campbell and Mr. Benson did most of the talking. No one else said much, only to agree to what Mr. Campbell said to Mr. Benson.

Q. Was something said about the price you was to get for the land, that afternoon? A. Yes.

Q. Do you remember about what the price was?

A. At first we agreed on \$4.00, and then Mr. Benson said there was a great deal of work, and abstracts to make out, and wanted us to reduce it to \$3.00, and we agreed on that. [154—50]

Q. Was that about the same price that Mr. Reddy had told you he was going to sell it to Mr. Benson for?

A. I don't know; I think he wanted \$4.00, but I won't be positive. I think he wanted \$4.00.

Q. At this meeting it was finally agreed that you would accept \$3.80? A. Yes.

Q. That is for what has been designated here as the Monache lands? A. Yes.

Q. And the agreement was that the deeds were to be placed in escrow. Was that the agreement?

A. Yes, the deeds were to be placed in escrow.

Q. And they were to be taken out of escrow when?

A. When the money was paid in.

Q. How long were they to remain in escrow?

A. At first it was thirty days, and then he asked for ninety, or sixty, I am not sure. I am not sure whether the first was thirty or sixty, and Mr. Benson asked for ninety days, and he said then it would be settled up entirely.

Q. That was satisfactory, was it? A. Yes.

(Testimony of Mrs. Mollie Conklin.)

Q. These deeds were not signed there that day in the office, were they? A. No.

Q. How long afterwards, if at any time, were these deeds signed by you?

A. I couldn't tell exactly—perhaps a month, perhaps six weeks or two months.

Q. You don't know how long after this meeting it was before you signed the deeds?

A. I think it was inside of two months, or perhaps less; [155—51] I couldn't say exactly.

Q. Where was it that you signed these deeds?

A. The first lot were signed up at Mrs. Reddy's house.

Q. Do you know how many you signed that time at Mrs. Reddy's house?

A. We signed a good many. Her daughter came in and when she saw them said that we had a pretty good job on hand.

Q. Did you read them over before you signed them?

A. I just glanced at the first, and it seemed to me a description of land, and I didn't read it through; I said to Mrs. Reddy that there was no need of it, Mr. Campbell wouldn't send us anything but what was right and proper, and she said of course not.

Q. It was in the house then that you signed the first deeds and there was quite a number of them?

A. Yes.

Q. And you didn't read them over? A. No, sir.

Q. Have you seen them since? A. No.

Q. You don't know what became of them, do you?

(Testimony of Mrs. Mollie Conklin.)

A. No; I know what ought to have become of them.

Q. Where was the next time you signed any deeds for this land?

A. At my home in the Hotel Savoy.

Q. How long after the meeting at Mrs. Reddy's was it that the second deeds were presented to you for signature?

A. It wasn't very long; maybe a day or two.

Q. Who was present at the time you signed the second deeds?

A. No one but my daughter, Mrs. Olcese.

Q. Did you read those deeds over?

A. No, I didn't read them over. [156—52]

Q. Who brought the deeds to you?

A. A boy from the office.

Q. From what office?

A. Campbell, Metson & Campbell.

Q. If you didn't read them over, how did you know they were deeds?

A. They said they would send deeds.

Q. Of your own knowledge, do you know whether or not they were deeds, if you didn't read them?

A. I didn't read them.

Q. As a matter of fact, you don't know then whether they were deeds or something else, do you?

A. Not from reading them I don't.

Q. Do you know from anything else?

A. No, I know they ought to have been deeds.

Q. You know they ought to have been deeds, but, as a matter of fact, you don't know whether they were deeds or not? A. No.

Q. Did you ask him why you should have to sign

(Testimony of Mrs. Mollie Conklin.)

this second set of deeds, or make any inquiry in regard to that matter? A. No.

Q. Did it appear to you to be rather strange or peculiar that you were asked to sign these second deeds?

A. I supposed they hadn't all been signed at first.

Q. Did you think it required a great number of deeds to transfer your interest in a tract of land?

A. No, I didn't, because they are meadows in the mountains, and some of them are miles apart, and I thought there had to be a deed for each piece of land.

Q. Yet you didn't read these instruments to find out what they were? A. No. [157—53]

Q. Were these the papers that you signed, or that you think you signed, Mrs. Conklin, either at Mrs. Reddy's home or at your home, Complainant's Exhibits "C" to "M" inclusive? Do you think these are the papers, or any of them, that you signed at either of these times? A. No, I don't think so.

Q. You don't think these are the documents. Are you sure on that point, Mrs. Conklin?

A. Well, I don't think I did. I didn't sign any of these things.

Q. You didn't, at that time? A. No.

Q. You have already examined these exhibits by your own counsel, these Exhibits "C" to "M." You have already examined these this morning, Mrs. Conklin? A. Yes.

Q. What do you state as to whether or not that is your signature to each of them?

A. It looks like it, but I wouldn't swear to it.

(Testimony of Mrs. Mollie Conklin.)

They have done so much crooked work that they are just as apt to force my signature as not. I have seen writing so much like mine in California that you can't tell them apart.

Q. So you don't know at the present time whether or not you signed these documents?

A. I wouldn't swear to it.

Q. You wouldn't testify to it? A. No.

Q. At the time you agreed to make the sale of this land to Mr. Benson it didn't make any difference to you if you received the purchase price for this land whether Mr. Benson relinquished it to the Government and traded it off for other land, did it, if you got your pay for it? [158—54]

A. No, I had nothing to do with what he did with it.

Q. You wouldn't make any objection to that if you had received your pay for this land, would you?

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial, and not proper cross-examination.

Mr. FRASER.—You may answer the question. If you had received—

WITNESS.—If I had received the money, of course, I would not have thought anything about it.

Q. If they had requested you at any time to issue these powers of attorney for the purpose of making this transfer, if you had received your money for the land, you probably would have executed them, would you not?

Mr. DAVIDSON.—We object to it as incompe-

(Testimony of Mrs. Mollie Conklin.)

tent, irrelevant and immaterial, and not proper cross-examination.

WITNESS.—No, I don't think I would have given them powers of attorney.

Mr. FRASER.—Q. If you had received your money for the land, Mrs. Conklin, would it then have made any difference to you?

A. Not after, of course, if I had received the money.

Q. Now, you received, I believe, \$2,750.00, as part payment for this land, did you not?

A. Yes, sir, two payments—\$1,250.00 once and \$1,500.00 another time.

Q. Did you ever demand the balance of the payment?

A. I used to ask down at the office when we were going to get it, and they always said "pretty soon." That was about all we got.

Q. When did you find out that these lands had been exchanged for lieu lands, or that Mr. Benson was making an effort to make the exchange of these Monache lands for other [159—55] Government lands? When did you discover that?

A. When my son wrote to me—N. E. Conklin.

Q. Do you remember about the time?

A. It was some time after.

Q. About how long after?

A. I couldn't tell you.

Q. Was it a couple of years after?

A. It was months and months after; I couldn't tell exactly. It might have been a year, and it might not.

Q. You don't know how long after it was?

(Testimony of Mrs. Mollie Conklin.)

A. No.

Q. Your son was the first one that informed you of that fact, was he? A. Yes, sir.

Q. What did you do upon receiving that information?

A. I turned it over to him to do what he thought fit.

Q. Turned it over to your son? A. Yes.

Q. Had he been looking after the matter for you?

A. Yes, after we found out that things were crooked.

Q. From the very first your son was advising with you in regard to the advisability of this sale, was he not?

A. Mr. Campbell made all the agreements.

Q. Your son was present in the office with Mr. Campbell when the contract was agreed upon, was he not? A. Yes.

Q. Didn't you talk it over naturally with your son in regard to this matter at that time?

A. We were there when they made the agreement; that was all there was about it. My son went home that afternoon, so that we hadn't any conversation about it, only that it was sold—we supposed it was.
[160—56]

Q. So the first you heard of it was through your son? A. Yes.

Q. And you think that was about a year after the meeting in Campbell's office?

A. It might be and it might not be a year; I couldn't tell exactly.

(Testimony of Mrs. Mollie Conklin.)

Q. What did you do right after you found it out? You turned it over to your son. What was done by your son—what did you authorize him to do?

A. I don't know exactly what he did. I guess he acted as attorney when I found out.

Q. Did you find out from anybody else besides your son that Benson was trying to make the exchange of the Monache lands for other Government lands?

A. No.

Q. The only one that informed you of that was your son? A. Yes.

Q. Did you find out from Mr. Campbell?

A. Couldn't find out anything from Mr. Campbell.

Q. He didn't inform you that Mr. Benson was making this exchange of lands? A. No.

Q. You read this exhibit, which was sent to you by Mr. Campbell?

A. I read that, yes; that was some time after, that I read that.

Q. This is dated December 11, 1901. This was a letter evidently addressed to you by Mr. Campbell, and you have stated that you received this letter.

A. Yes.

Q. By this letter he informs you of the condition of affairs, doesn't he? [161—57] A. Yes.

Q. There wasn't anything secret about it, so far as this letter was concerned, or about the matter of the exchange of the lands, was there?

A. No, I didn't know anything about that. I supposed that we had sold the land.

Q. He states in this letter of December 11, 1901,

(Testimony of Mrs. Mollie Conklin.)

that "If you or your sons think you can handle this land better than it is being handled now," that you should do so, and take it up, does he not?

A. Yes, we had a better offer.

Q. Did you ever write to Mr. Campbell and tell him you wanted to take it up, in answer to that letter?

A. When I went back there—Mrs. Reddy and I—I told her about it, and she said we would go down and see Mr. Campbell, and he said he couldn't take it out of Benson's hands; it was in such a muddle he couldn't do anything. He had told us before that that we could get it any time, take it out of his hands.

Q. You also received this letter with the signature of Mr. Benson on it, at the same time you received the letter from Mr. Campbell? A. Yes.

Mr. FRASER.—I believe that is all I desire to ask.

Judge RICHARDS.—Q. What did you do after receiving that letter from Mr. Benson?

A. I always sent these letters to my son; I read them and sent them to him.

Q. That is the only knowledge you have about what was done after that?

A. I handed them over to him. [162—58]

Q. Is that the only knowledge you have as to what was done about these lands, after you turned it over to your son?

A. Yes, that is all I knew about them. I knew we hadn't our money.

Q. How long before you received the Campbell and Benson letters did you have information that they were exchanging these for other lands?

(Testimony of Mrs. Mollie Conklin.)

A. I didn't understand anything about that. I supposed we had sold the land to Mr. Benson.

Q. These letters are the first knowledge you had of it?

A. I didn't know anything about that. We sold it to Mr. Benson, and he was to pay us the money.

Q. I simply asked you, Mrs. Conklin, if these letters were the first knowledge you had that they were exchanging your lands for other lands? A. Yes.

Q. Then, you received the first information you had from Mr. Campbell, through this letter?

A. Yes.

Q. Then, you are mistaken about receiving the first information from your son, are you?

A. Yes, about the powers of attorney.

Q. You received the first information from your son about the powers of attorney? A. Yes.

Q. When was that, relative to the date of this Campbell letter? A. I couldn't say.

Q. Before or after?

A. I couldn't remember that, no; it was long ago.

Q. When did you first see these powers of attorney?

A. I never saw them before. This is the first time.

[163—59]

Q. This is the first time you recall seeing them?

A. Yes.

Q. I didn't quite understand you, Mrs. Conklin, whether you are ready to say that the signature to these powers of attorneys are yours or not.

A. It looks like my writing, but they have done so much crooked business that I couldn't say.

(Testimony of Mrs. Mollie Conklin.)

Q. Are you willing to swear that that isn't your signature?

A. I wouldn't swear it isn't, or that it is; it looks like it.

Q. You signed quite a bunch of papers about these lands, and these might have been some of them?

A. They might, but not with that writing on them.

Q. What I want to get at is, in signing these two packages of papers that you speak about with reference to these lands, were these signatures on these powers of attorney that look like yours? These might have been one of the packages of papers that you signed, mightn't they? A. They might.

Judge RICHARDS.—I believe that is all I care to ask.

(At this point Mr. McCracken, the examiner, returned to the room.)

Redirect Examination.

(By Mr. DAVIDSON.)

Q. Mrs. Conklin, do you know, of your own knowledge, of any agreement between Patrick Reddy in his lifetime and John A. Benson, in regard to the sale of the Monache lands?

A. No, I know they talked about it.

Q. Do you know that there was any agreement, prior to Patrick Reddy's death, in regard to the sale of the Monache lands to Mr. Benson?

A. I don't know whether he tied it up or not, but I know [164—60] they had talked over the sale of it. Mr. Reddy said he wouldn't sell it for anything but cash.

(Testimony of Mrs. Mollie Conklin.)

Q. How do you know about the agreement, or any talk between Mr. Reddy in his lifetime and Mr. Benson? A. I know what Mr. Reddy said.

Q. Mrs. Conklin, were you, in August and September, 1900, familiar with the mode of exchanging what is known as base lands, lands situated in the forest reserve, for lieu lands?

A. No, I didn't know anything about it.

Q. Now, at the time of the meeting in Mr. Campbell's office, did you agree upon a method for the sale of the Monache lands to Mr. Benson?

A. We agreed to sell it to him; he was to pay for it in ninety days.

Q. Now, did you ever afterwards have any agreement with either Mr. Campbell or Mr. Benson whereby you changed the terms of the sale, or the method by which the sale should be effected?

A. Mr. Benson asked for further time.

Q. Just answer the question. Did you ever afterwards have any agreement with either Mr. Campbell or Mr. Benson whereby the terms, the manner and method of making the sale were changed?

A. No.

Q. Mrs. Conklin, have you ever had much experience, any experience, in business matters, pertaining to business? A. I have not.

Q. What is your age now, Mrs. Conklin?

A. I am over sixty.

Q. It is a leading question, but—

A. I am over twenty-one.

Mr. DAVIDSON.—We desire now to re-offer

Complainant's Exhibit "A," as an original instrument recorded in the office of [165—61] the recorder of Inyo County, California, and also recorded in the office of the County Recorder of Tulare County, California, as shown by the original endorsements on the instrument.

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial; it doesn't tend to prove any title, and for the further reason that it isn't authenticated as required by law to admit it as the judgment of another court in evidence in this court.

Mr. DAVIDSON.—In addition to the offer made this morning as an original instrument recorded in the office of the two counties.

(Witness excused.)

It is stipulated and agreed by and between counsel for the plaintiffs and the respective defendants that prior to the month of June, 1900, the complainant Mollie Conklin and one Patrick Reddy were the owners of the base lands situated in the State of California, and within the boundaries of the Sierra Forest Reserve, as described in paragraph nine of the complainant Mollie Conklin's amended bill of complaint herein, and that the complainant Mollie Conklin was the owner of an undivided one-half interest in said lands, and that at the time of the meeting in the office of J. C. Campbell, in August, 1900, Patrick Reddy was deceased, and that Edward A. Reddy and Emily M. Reddy were, on said date, the administrator and administratrix of the estate of Patrick Reddy, deceased, and at said times the said base lands were owned by the said complainant Mollie Conklin

(Testimony of Mrs. Margaret Conklin Olcese.)
and by the estate of Patrick Reddy, deceased, and that Mollie Conklin was the owner at said time of an undivided one-half interest in said base lands, and that the estate of Patrick Reddy, deceased, was the owner of an undivided one-half interest in said base lands. [166—62]

[Testimony of Mrs. Margaret Conklin Olcese, for Complainants.]

Mrs. MARGARET CONKLIN OLCESE, produced as a witness on behalf of complainants, having been duly sworn, testified as follows:

Direct Examination.

(By Mr. DAVIDSON.)

Q. Where do you reside, Mrs. Olcese?

A. Since 1902 I have been mostly in New York, with the exception of twice I have been to California three or four months at a time.

Q. What relation, if any, are you to the complainant, Mollie Conklin? A. Daughter.

Q. What relation were you to one Patrick Reddy, late deceased? A. His niece by marriage.

Q. And you were acquainted with Patrick Reddy in his lifetime? A. Very well.

Q. And with Mrs. Emily M. Reddy?

A. Very well.

Q. And with one Edward A. Reddy? A. Yes.

Q. Where were you living in the months of August and September, 1900?

A. At the Hotel Savoy, San Francisco, California.

Q. With whom were you living at that time?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. With my mother.

Q. Mollie Conklin? A. Yes.

Q. In 1900 were you acquainted with the firm known as Campbell, Metson & Campbell, attorneys at law, of San Francisco, California? [167—63]

A. I was.

Q. Were you, in the months of August and September, 1900—do you—were you present when your mother signed any instruments sent her from the office of Campbell, Metson & Campbell?

A. I was.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial, not tending to connect the instruments with any matters in litigation in this suit.

Mr. DAVIDSON.—Q. You may state who, if you know, brought the papers to your mother from the office of Campbell, Metson & Campbell, about the time asked about.

A. I didn't open the door; mother opened the door, and she told me that they were papers from the office of Mr. Campbell.

Q. You didn't see who brought them? A. No.

Q. Did you see your mother sign those papers?

A. I did.

Q. Was anyone else present at the time she signed them, other than yourself and your mother?

A. No, not at the time she signed them, but people were passing in, coming in, as they always do in a hotel.

Q. Do you know who came for the papers that your mother had signed?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. Yes, I opened the door, and it was one of the office boys from Campbell, Metson & Campbell's.

Q. Had you seen the boy who came for the papers in the office of Campbell, Metson & Campbell?

A. Yes, I opened the door, and he said he had been sent from the office of Mr. Campbell for the papers from mama, and I turned to mother, and so she did them up and gave them to the boy and the boy took them. [168—64]

Q. Were you present with your mother during all the time these papers were in your apartments on that day? A. Yes, I was there all afternoon.

Q. Was any notary public present at your mother's apartments during that time, while the papers were there? A. No.

Q. Did your mother acknowledge these papers before anyone? A. Not in my presence.

Q. You were present all the time the papers were there, were you, Mrs. Olcese?

A. Yes, because the boy didn't come for them until somewhere between four and six o'clock.

Q. And during none of that period was any notary public or other person present to take acknowledgments? A. No.

Q. Did you afterwards, Mrs. Olcese, at the request of your mother, or otherwise, call at the office of Campbell, Metson & Campbell in regard to any papers or business matters relating to the sale of the Monache lands?

A. Yes, I called a number of times.

Q. With whom did you talk during those conversations?

(Testimony of Mrs. Margaret Conklin Olcese.)

A. Why, I think the first time, as near as I can place them in their natural sequence, I took a telegram down to Mr. Campbell; we got the telegram from Bakersfield.

Q. Who was that from?

A. From my brother, N. E. Conklin. I believe I phoned to Mrs. Reddy and she met me and we went to the office together, and we saw Mr. Campbell.

Q. About what time was that?

A. As nearly as I can fix it, in the month of November, 1900. [169—65]

Q. Did you have a conversation with Mr. J. C. Campbell at that time?

A. I did. I told him of the offer and showed him the telegram, and asked him if he wouldn't see Mr. Benson and see what could be done about it, and he ended up by saying perhaps I had better take it to him, and Mrs. Reddy said, "Hadn't I better go with her?" And he said, "No. I will send one of the office boys with her," and he called him and he and I went down to Mr. Benson's office.

Q. During the conversation with Mr. Campbell at that time was anything said in regard to the deeds for the Monache lands that your mother had made?

A. No, not at that time.

Q. Did you at that time, or, after seeing Mr. Campbell did you go to the office of Mr. John A. Benson?

A. I did; I went then, immediately.

Q. Did you see Mr. Benson personally at that time?

A. Yes; Mr. Benson was not in when we got there.

(Testimony of Mrs. Margaret Conklin Olcese.)

There was some woman in the office, and she said Mr. Benson was out, and asked us to wait, which we did, and Mr. Benson came in and I told him we had got this telegram, and wanted to know what he was going to do about it, and I said mother didn't want to wait six or eight or three months for the money, and he said "I prefer not to talk to you about this; all my business has been done with Mr. Campbell, but as far as you are concerned, I prefer not to talk to you."

Q. That was all that was said between you and Mr. Benson at that time?

A. Yes, he wouldn't talk to me.

Q. Did you ever see Mr. Campbell in regard to the Monache lands?

A. I went down to see him afterward, yes, and, of course, [170—66] he had his private office on the inside, and I went into Milton Bernard's office—the room he occupied, at least—

Q. Who was he?

A. He was one of the office boys, supposed to be a clerk there—I thought he was one of the firm—but Mr. Campbell was always out, and I never could see him.

Q. Did you make any inquiry for Mr. Campbell?

A. I did. I told him that I had come down to see Mr. Campbell in regard to the deeds being in escrow.

Q. From whom did you make such inquiry?

A. Milton Bernard and Mr. Jacobs.

Q. Who was Mr. Jacobs?

A. He was one of the office lawyers or clerks.

Q. What, if anything, did they inform you with re-

(Testimony of Mrs. Margaret Conklin Olcese.)

gard to the deeds to the Monache lands?

A. Every time I would go and ask them about it they would tell me they were in escrow, and Milton would disappear and come back and say that Mr. Campbell was out, but that they were in the bank with which they did business, probably, and that was the Anglo-California Bank. That was all we could get out of them.

Q. Do you remember how many trips you made to see Mr. Campbell after the first one you have testified to?

A. I went back to get the telegram, and it had disappeared, and then I went back between three and five times, I guess, about the escrow business.

Q. How did you come to see about these escrow papers? A. We weren't getting any money.

Q. You may state whether your mother wanted you to ascertain in regard to the matter.

A. Yes, mother and my brother wanted to know.

Q. Were you ever able to receive any information from Mr. [171—67] Campbell, or from the firm of Campbell, Metson & Campbell, as to the bank in which the deeds were placed in escrow?

A. No, no one but Milton Bernard. He said he presumed they were in the Anglo-California Bank.

Q. You may state whether or not you were informed that the deeds to the Monache lands had been delivered to John A. Benson, conveying the Monache lands to the United States, and filed for record.

A. No, they told me always they were in escrow.

Q. During any time while you were making in-

(Testimony of Mrs. Margaret Conklin Olcese.)

quiries in the office of Campbell, Metson & Campbell, did they inform you that any powers of attorney had been executed for the selection of lieu lands.

A. No.

Q. Was anything said about the selection of lieu lands at any of these times? A. No.

Q. In your conversation with Mr. Benson did he say anything in regard to the base lands having been relinquished to the United States?

A. No, he wouldn't talk to me.

Q. Did he say at that time that he had secured powers of attorney and made selections for your mother of lieu lands? A. No.

Q. Were you present when any payments were made by Mr. Campbell or the firm of Campbell, Metson & Campbell, on account of the sale of the Monache lands?

A. Yes, I was with my mother when \$1,500.00 was paid to her.

Q. Who made the payment to her at that time?

A. We went in and there was a check from some place came out, and we had to wait while Milton Bernard—I don't know whether he went personally or sent one of the boys to the bank, [172—68] and the money was given to us in gold coin.

Q. Were you present at the time of the payment of \$1,250? A. No.

Q. Now, Mrs. Olcese, had you been living with your mother continuously previous to 1900?

A. I had lived with mother since my father's death in 1897.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. You may state, if you know, whether or not, from the time of your father's death up to say September, 1900, whether or not Mr. J. C. Campbell, or the firm of Reddy, Campbell & Metson were your mother's attorneys. A. They were.

Q. Do you know if, during that time, the firm of Reddy, Campbell & Metson, or J. C. Campbell, acted as your mother's attorneys in different matters that she had? A. They acted in my father's estate.

Q. Do you know whether or not the firm of Reddy, Campbell & Metson were attorneys for your father in his lifetime? A. Yes.

Q. For how long, if you know?

A. I don't know the number of years.

Q. Previous to 1900 do you know whether or not your mother had consulted any other lawyer than the firm of Reddy, Campbell & Metson, as to any legal matters that she might have? A. No.

Q. Do you know where your mother was between the first part of the month of December, 1900, and the latter part of the month of August, 1901?

A. Some time the first of December—between the first and third of December—mother left San Francisco and went to Bakersfield.

Q. What year? A. 1900. [173—69]

Q. Bakersfield, California? A. Yes.

Q. Do you know how long she stayed in Bakersfield?

A. She stayed until the latter part of the following August or September.

Q. That is August, 1901? A. 1901.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. Were you in San Francisco during the period that your mother was in Bakersfield, or out of San Francisco?

A. I was there until Christmas week and then I went to Bakersfield just for the holidays.

Q. During the time you were in San Francisco prior to the holidays where were you living?

A. I occupied the rooms in the Hotel Savoy.

Q. Was your mother at home any time during that period? A. She was not in San Francisco.

Q. When you went to Bakersfield during the holidays you may state whether or not you found your mother in Bakersfield. A. Yes, she was there.

Q. About what time after the holidays did you return to San Francisco?

A. I think I came back directly after New Years.

Q. How long did you stay in San Francisco that time?

A. I stayed there then until summer—I think it must have been in June—because we always went away during the summer months, and I went back down and my mother and sister joined us and we went down to Santa Monica.

Q. During that period since your return from Bakersfield, after New Years, 1901, up to the time you went to Bakersfield about June or July, 1901, had your mother been in the City of San Francisco or County of San Francisco?

A. No, I lived there alone. [174—70]

Q. Were you present with your mother continuously from the time you went to Bakersfield in June

(Testimony of Mrs. Margaret Conklin Olcese.)
or July, 1901, up till August or September, 1901?

A. Yes, we were together all that time.

Q. During that time did your mother return to San Francisco or to the County of San Francisco?

A. No, we were in the southern part of the state.

Cross-examination.

(By Mr. FRASER.)

Q. This visit you made to the office of Mr. Campbell I believe you stated was after you received a telegram from your brother from Bakersfield?

A. Yes.

Q. What was that telegram in regard to?

A. In regard to the Monache lands.

Q. Do you remember what it stated?

A. I couldn't give it in the exact words, but I know it stated that there was a man down in Bakersfield who would take the lands, and had the money in the bank, and would pay \$5.00 an acre for them.

Q. And it had nothing to do with the question of deeds, or anything of that kind? A. No.

Q. But was just about another buyer? A. Yes.

Q. That was the reason you made the trip to Mr. Campbell's office? A. Yes.

Q. Did you go down there to find out if you could get the land back from Mr. Benson?

A. No; I just took it down to let Mr. Campbell see that we needed the money. [175—71]

Q. Did he advise you to sell it to the man in Bakersfield? Was your object in seeing Campbell to get him to permit you to sell it to this man in Bakersfield? A. We wanted some money.

(Testimony of Mrs. Margaret Conklin Olcese.)

Q. At that time you hadn't any knowledge that the deeds were turned over to the Government in consideration of other lieu lands? A. No.

Q. And it had nothing to do with that transaction then?

A. No, only on one of these visits to the office I did ask Mr. Milton Bernard—I asked him if Benson was going to do any crooked work, and he said “no, he wouldn't dare do it. We kept him out of jail a few years ago, and he wouldn't dare do it.”

Q. I believe you stated that this was the only interview that you had with Mr. Campbell personally?

A. Yes, Mr. Campbell was always out when I went to see him.

Q. And Mr. Benson refused to discuss the matter with you at all?

A. Yes. He said “My business has been done with Mr. Campbell entirely”; he said he had done all his business with Mr. Campbell.

Q. You understood him to mean that Mr. Campbell was his attorney?

A. I don't know; I presume Mr. Campbell must have been our attorney in that case.

Q. But after he told you that, what was your understanding then?

A. That he wanted to see Mr. Campbell and see what Mr. Campbell would say about it, as long as he was acting for us.

Q. Did you go back to Mr. Campbell after you saw Mr. Benson?

A. I went back and told them that Mr. Benson was

(Testimony of Mrs. Margaret Conklin Olcese.)

coming up to see Mr. Campbell, and left the telegram there to be given [176—72] to Mr. Campbell, and then when I went back the telegram had been placed on his desk and it had disappeared.

Q. Was Mr. Campbell well known to your family?

A. Yes, he has been a guest in our house, and we have been a guest in his house.

Q. You knew him for a great many years?

A. Yes.

Q. Mr. Reddy was some relation to you, was he?

A. Yes, an uncle by marriage—more like an own uncle, though.

Q. Your father had his legal business transacted by Mr. Reddy, did he not?

A. No; Mr. Campbell acted also for my father.

Q. When he was alive? A. Yes.

Q. After the death of your father, what business did Mr. Campbell transact for you outside of the settlement of the estate?

A. That was the only business we had.

Q. After the death of your father?

A. The firm settled up the estate.

Q. That was the only legal business they transacted for you?

A. No; Mr. Campbell was afterwards acting as my mother's attorney to carry out the agreement of this sale with Benson.

Q. How do you know that?

A. Because I saw Mr. Metson personally myself about a matter of business that was my own private business, and asked him what Mr. Campbell was go-

(Testimony of Mrs. Margaret Conklin Olcese.)

ing to do, and he said that Mr. Campbell had charge of the matter and he didn't know anything about it.

[177—73]

Q. Your knowledge of Mr. Campbell's relation came from this conversation you had with Mr. Metson?

A. No; from my own interview with Mr. Campbell.

Q. What did he state to you at that time?

A. He simply told me to take the telegram down; I don't remember the full conversation I had with him.

Q. He told you to take the telegram to Mr. Benson?

A. Yes, and see what Mr. Benson would say to it.

Q. From that you would also conclude that he was acting as your mother's attorney?

A. My mother said he was.

Q. From all these things that you have just stated you arrived at the conclusion that Mr. Campbell was your mother's attorney?

A. Was acting as her attorney to carry out this agreement of sale.

Q. That was your understanding, as you have stated it here?

A. When I went to see about the sale, it was always for Mr. Campbell that I asked.

Q. Did you say you only saw him one time?

A. Yes, because he used to send word that he wasn't in.

(Testimony of Mrs. Margaret Conklin Olcese.)

Redirect Examination.

(By Mr. DAVIDSON.)

Q. On these visits that you made to the office of Campbell, Metson & Campbell, you always inquired for Mr. J. C. Campbell? A. Always.

(Witness excused.) [178—74]

[Testimony of N. E. Conklin, for Complainants.]

N. E. CONKLIN, a witness on behalf of the complainants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DAVIDSON.)

Q. You may state your name.

A. N. E. Conklin.

Q. Where do you reside, Mr. Conklin?

A. Berkeley, Alameda County, California.

Q. What relation do you bear to the complainant Mollie Conklin? A. I am her son.

Q. You are also the son of A. R. Conklin, deceased? A. Yes, sir.

Q. Were you acquainted with one Patrick Reddy, attorney at law, of San Francisco, in his lifetime?

A. Yes.

Q. What relation did you bear to Mr. Reddy?

A. I am his nephew by marriage; he is my uncle.

Q. Do you know what relation existed between Patrick Reddy in his lifetime and Joseph C. Campbell? A. They were partners.

Q. Do you know what the name of the firm was?

A. Reddy, Campbell & Metson.

Q. Mr. Metson, what were his initials?

(Testimony of N. E. Conklin.)

A. W. H.

Q. Do you know when Patrick Reddy died?

A. He died on the 26th of April, 1900.

Q. Do you know what relation had existed between your mother and the firm of Reddy, Campbell & Metson during your father's lifetime, and up to the death of Mr. Reddy—after your father's—
[179—75]

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial, and calling for a conclusion of the witness.

WITNESS.—I do.

Mr. DAVIDSON.—Q. You may state what it was, if you know. A. Between what dates?

Q. From the death of your father up to the death of Mr. Reddy.

A. The firm were the attorneys for my mother.

Q. Do you know what business they transacted for your mother as her attorneys during that period?

A. They were attorneys for her personally, and as executrix.

Q. During that time was the firm of Reddy, Campbell & Metson your mother's attorneys in all legal matters that she had? A. Yes.

Q. You may state, if you know, who was your mother's attorney after the death of Mr. Reddy, and up to the time of the settlement of your father's estate. A. Campbell & Metson.

Q. And which Campbell was it that was attorney for your mother?

A. J. C. Campbell, the defendant in this action.

(Testimony of N. E. Conklin.)

Mr. FRASER.—I move to strike out the answer of the witness, as a conclusion, and no statement of fact.

Mr. DAVIDSON.—Q. Mr. Conklin, were you present at a meeting at which your mother, Mollie Conklin, Mrs. Emily M. Reddy, the widow of Patrick Reddy, deceased, Mrs. Coleman, the daughter of Emily M. Reddy, Mr. John A. Benson and Mr. Joseph C. Campbell were present, about the month of August or September, 1900?

A. Yes, I was present. [180—76]

Q. Who asked you to be present at that meeting?

A. Mr. Campbell.

Q. That was Joseph C. Campbell, the defendant?

A. It was.

Q. Were you at that time actively engaged in the practice of law, Mr. Conklin? A. No.

Q. Were you at that time attorney for Mollie Conklin in any matters or for any purpose?

A. No.

Q. You may state, Mr. Conklin, what was said at the meeting in the office of Mr. Campbell, to which you have just referred.

A. I can't remember the exact conversation, but the substance of the conversation was in regard to negotiating a sale for the Monache lands, and the result was that we agreed to sell the Monache lands, that the deeds were to be placed in escrow, the price was \$3.00 an acre, and they were to—

Mr. FRASER.—Was this agreement reduced to writing?

(Testimony of N. E. Conklin.)

WITNESS.—It was never reduced to writing. The deeds were to be placed in escrow, and he stated that he would close the matter up in ninety days.

Mr. DAVIDSON.—Q. Who stated?

A. Mr. Benson.

Q. You may state, if you remember, who was to prepare the deeds for the Monache lands.

A. Benson said that he would prepare the deeds and satisfy himself as to the title.

Q. Was anything said as to what should be done with the deeds after they were prepared by Mr. John A. Benson?

A. Mr. Campbell was to supervise and see that the deeds were as we had agreed upon and to attend to putting them into escrow. [181—77]

Q. Do you know, of your own knowledge, Mr. Conklin, what relation—whether or not the relation of attorney and client existed at that time between Mrs. Emily M. Reddy and Mr. Joseph C. Campbell?

A. Yes, I know it did.

Q. In what way, Mr. Conklin?

A. Mr. Campbell was attorney for Mrs. Reddy personally and as executrix.

Q. Executrix of what?

A. Of the will of Patrick Reddy, deceased.

Q. Was anything said at that time as to whom the deeds should be made, conveying the Monache lands?

A. It was understood that Mr. Benson was purchasing the lands.

Q. Was anything said at that time about convey-

(Testimony of N. E. Conklin.)

ing the lands to the United States of America as base lands for the selection of lieu lands?

A. Not a word.

Q. Was anything said at that time as to your mother or any of the other owners of the base lands signing applications for the selection of lieu lands?

A. Nothing was said; selections were not mentioned.

Q. Was anything said in regard to the execution by your mother of powers of attorney to deal in lieu lands that might be selected?

A. Powers of attorney were not mentioned at the meeting.

Q. What was the agreement as to what should be done with the deeds after their execution?

A. They were to be placed in escrow.

Q. By whom, if you remember?

A. Mr. Campbell was to attend to the matter.

Q. Who at that meeting advised your mother, Mollie Conklin, [182—78] in regard to the method and mode of conveying and disposing of the Monache lands? A. Mr. Campbell.

Q. Joseph C. Campbell?

A. Joseph C. Campbell.

Q. Were you at that time advising your mother as to the legal matters involved in the transfer of the land? A. I was not.

Q. Were you consulted in regard to the legal phase of the conveyance of the land?

A. Prior to our going there we didn't talk the matter over, as I remember it.

(Testimony of N. E. Conklin.)

Q. Were you consulted at the time as to the best manner and method that should be employed in conveying the lands to Mr. Benson?

A. We discussed it, but relied on Mr. Campbell's confirmation of what we had discussed.

Q. Did Mr. Campbell approve the method agreed upon for the conveyance of the base lands, the Monache lands? A. Yes, he did.

Q. You may state whether or not it was agreed at that time that Mr. Campbell should examine and approve the deeds for the Monache lands before they should be signed by your mother, Mollie Conklin.

A. It was, and Mr. Campbell stated at that time that as the base lands were involved in probate it would be necessary for him to secure an order of sale before we could enter into the transaction, in order to carry it through.

Q. What probate proceedings did he refer to at that time?

A. The matter of the Reddy estate.

Q. Who was to attend to having the deeds executed by your mother and Mrs. Emily M. Reddy and Edward A. Reddy? [183—79]

A. Mr. J. C. Campbell was to supervise it.

Q. Was anything said at that time in regard to delivering the deeds to John A. Benson previous to payment being made for the Monache lands?

A. Not a word.

Q. What condition, if any, was imposed upon the delivery of the deeds to John A. Benson?

A. The moneys should first be paid into the bank

(Testimony of N. E. Conklin.)

before he could take the deeds out.

Q. Was anything said about the lands being surrendered and lieu lands selected previous to payment? A. Nothing.

Q. What was the consideration agreed upon, and how was it to be paid for the Monache lands?

A. The consideration agreed upon was cash, \$3.80 an acre, and it was to be paid into the bank when they took the deeds out.

Q. How many acres of land, if you know, Mr. Conklin, were involved in the Monache tract, known as the Monache lands? A. About 9,600 acres.

Q. Mr. Conklin, on the day of the conference in Mr. Campbell's office, after that did you have any further conference with your mother or Mr. J. C. Campbell in regard to the sale of the land?

A. I did not with Mr. Campbell; I did with my mother.

Q. When?

A. When we were leaving the office that afternoon, and I stated that—

Mr. FRASER.—We object to any conversation had between the witness and complainant Mollie Conklin after they left the office of J. C. Campbell, as incompetent, irrelevant and immaterial.

Mr. DAVIDSON.— [184—80] Q. Mr. Conklin, what did you do after that meeting, if anything? Did you stay continuously in the City of San Francisco?

A. After the meeting was over, I immediately got ready and left for Bakersfield that evening.

(Testimony of N. E. Conklin.)

Q. Where were you living at that time?

A. Bakersfield, Kern County, California.

Q. That was your home?

A. That was my home.

Q. How long did you stay in Bakersfield after going down that time?

A. About a year and a half before I visited San Francisco again.

Q. During that time did you have any conversation with Mr. Joseph C. Campbell or John A. Benson?

A. Never saw either one of them.

Q. Were these matters of the sale of the Monache lands at any time put upon your advice as an attorney; were you employed in the matter of investigating the sale of the Monache lands?

A. Yes.

Q. About what time?

A. About 1901, December.

Q. You may state what the first information you received as to the deeds for the Monache land conveying them to the United States was as to being placed of record.

A. There was a letter from Mr. Campbell, and a letter from Mr. Benson which my mother gave me.

Q. I call your attention, Mr. Conklin, to Complainant's Exhibit "N," letter dated December 11, 1901, from J. C. Campbell. You may state whether that is the letter you received from your mother.

A. That is the letter. [185—81]

Q. She turned the letter over to you at that time?

A. She did.

Q. I hand you Complainant's Exhibit "H-1," and

(Testimony of N. E. Conklin.)

you may state whether or not that is a letter also delivered to you by your mother at the same time.

A. Yes.

Q. Was that the first information you had received with regard to the relinquishment of the Monache lands to the Government and the selection of lieu lands?

A. Yes, that was the first information I had of it.

Q. When you received that letter, what instructions, if any, did you receive from your mother in regard to investigating the matter?

A. I don't remember as there were any instructions; I simply took it up and investigated it.

Q. After the receipt of those letters, did you act as your mother's attorney in regard to those lands?

A. Yes, I did.

Q. You may state what you did after the receipt of the letters marked "N" and "N-1," in regard to ascertaining what had been done in regard to the sale and transfer of the Monache lands.

A. After this date I went to Visalia, Tulare County, California, the county seat of Tulare County, where the public records are kept, and I investigated the records, and discovered that a large number of deeds conveying these lands to the Government were on record.

Q. After discovering these deeds conveying the land to the United States Government on record, did you communicate with Mr. J. C. Campbell, or the defendant John A. Benson? A. Yes.

Q. About what time? [186—82]

(Testimony of N. E. Conklin.)

A. I can't tell you. The letters there are dated about the time that I had any communication whatever from Mr. Campbell.

Mr. DAVIDSON.—I will have this marked Complainant's Exhibit "O," for identification. (Marked).

Q. Mr. Conklin, I hand you letter on the letter head of Campbell, Metson & Campbell, attorneys at law, dated January 29, 1902, addressed N. E. Conklin, Bakersfield, California, and signed J. C. Campbell. You may examine that letter and state whether or not you ever received it, and, if so, how, and if you know in whose handwriting J. C. Campbell is signed to that letter?

A. I received this letter about the date which it bears, through the United States mail.

Q. Is that letter in answer to a previous letter written by you to Mr. Joseph C. Campbell?

A. It is.

Q. Have you a copy of the letter which you wrote to Mr. J. C. Campbell? A. No, I have not.

Q. Have you the original in your possession?

A. No, I have not.

Q. You may state the contents of what you wrote to Mr. Campbell previous to receiving that letter?

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial, not the best evidence. No demand has been made, so far as I know, for the production of the original letter.

Mr. DAVIDSON.—We at this time demand of counsel for the defendant Joseph C. Campbell that

(Testimony of N. E. Conklin.)

he produce the letter written by Mr. Conklin to Joseph C. Campbell, previous to January 29, 1902, to which this letter is an answer.

Mr. FRASER.—Counsel for the defendant Campbell states that [187—83] this is the first intimation that he has received that such demand would be made; that he lives in the City of Boise, Idaho, that the defendant lives in San Francisco; that he has no correspondence whatever in his possession of the character called for, and the demand is not made in accordance with the rules of this court, and therefore it is impossible to produce the same.

Mr. DAVIDSON.—You may state the contents of the letter.

Mr. TIPTON.—Prove that Mr. Campbell was beyond the jurisdiction of this court.

Mr. DAVIDSON.—Q. Do you know whether or not the defendant J. C. Campbell—do you know where the defendant J. C. Campbell lives at this time? A. San Francisco, California.

Q. That is his residence? A. Yes.

Q. And has been, since the commencement of this action?

A. Part of the time he lived across the bay in Berkeley, and in Alameda, I think, but he has lived around the bay all this time.

Q. Do you know whether or not he is now within the jurisdiction of this court?

A. I don't know; I haven't seen Mr. Campbell for a long while.

Q. He does not at this time reside within the juris-

(Testimony of N. E. Conklin.)

diction of this court, or within the state of Idaho?

A. He does not.

Q. You may state what was the contents of the letter which you wrote—

Mr. FRASER.—I desire to ask the witness a question. [188—84]

Q. You are one of the attorneys for the complainant in this case? A. Yes.

Q. And have been since it was started? A. Yes.

Q. And you reside in the same state as the defendant Joseph C. Campbell? A. Yes.

Q. You have made no demand upon Joseph C. Campbell, have you, for the production of these letters? A. No.

Q. You have made no demand upon his attorney, Alfred A. Fraser, of Boise City, Idaho? A. No.

Mr. FRASER.—The record shows the fact that Alfred A. Fraser has been the attorney for Joseph C. Campbell since a short time after the filing of this complaint. We still insist upon our objection that no foundation has been laid for the introduction of the documents which the witness is asked to testify regarding.

Mr. DAVIDSON.—Q. You may state now, Mr. Conklin, the contents of the letter written by you to Mr. Joseph C. Campbell, to which the letter marked Complainant's Exhibit "O," is a reply.

Mr. FRASER.—I object to the question for the same reasons set forth just—the same objection set forth to the other question, hereby repeated.

WITNESS.—I wrote to Mr. Campbell stating that I had a party at Bakersfield who had offered to buy

(Testimony of N. E. Conklin.)

the Monache lands, and wanted to know if he would co-operate with me in the sale to this party, and this letter answered that.

Mr. DAVIDSON.—Q. Are you acquainted with the handwriting of the defendant [189—85] J. C. Campbell? A. I am.

Q. You may state whether or not that is his handwriting in the letter :

A. That is his handwriting.

Mr. DAVIDSON.—We now offer in evidence Complainant's Exhibit "O," as identified by the witness.

Mr. FRASER.—No objection.

Mr. DAVIDSON :

Complainants' Exhibit "O."

"Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL,
Attorneys at Law,
115 to 122 Crocker Building, San Francisco.

January 29, 1902.

Mr. N. E. Conklin,
Bakersfield, Cal.

Dear Sir :

Yours of the 28th at hand. I do not exactly understand or comprehend the proposition which you make. Is it that a man wants to step into Benson's shoes and take this property to sell, and pay us the money as fast as he sells it, or what? Will he buy Mrs. Reddy's land outright and take his chances?

(Testimony of N. E. Conklin.)

Who is the man? I want to know all about it before I would be willing to make any proposition pro or con. I wish you would find someone that would buy Mrs. Reddy out of the entire matter, and then let this man and yourselves take it up. I apprehend that more money than \$4.00 an acre might be made out of it by people who could handle it properly, but it is in the Estate and we are not situated to handle it as it ought to be.

Yours very truly,

J. C. CAMPBELL." [190—86]

Mr. DAVIDSON.—Q. After receiving the letter marked Complainant's Exhibit "O," did you have any further correspondence with the defendant J. C. Campbell in regard to this matter? A. I did.

Q. About when, Mr. Conklin?

A. I can't remember the date. I can only remember from refreshing my mind from the letter.

Mr. DAVIDSON.—I will have this marked as Complainant's Exhibit "P," for identification. (Marked.)

Q. Mr. Conklin, I hand you letter marked Complainant's Exhibit "P," for identification, written upon the stationery of Campbell, Metson & Campbell, attorneys at law, dated October 27, 1902, addressed to Norman Conklin, Esq., Bakersfield, California, and signed J. C. Campbell. You may examine this letter and state how you received it, and if you know whose handwriting the name J. C. Campbell, and the written portion on the bottom is in.

A. I received this letter about the date which it bears, in the United States mails, and it is signed by

(Testimony of N. E. Conklin.)

J. C. Campbell; the writing right below which is written by Mr. Metson.

Q. That is, the writing below his is the writing of Mr. Metson?

Mr. FRASER.—I object to the last statement made by the witness, for the reason that no foundation is laid.

WITNESS.—I knew Mr. Metson's handwriting, have seen him write, have received letters from him, and that is his writing.

Mr. DAVIDSON.—Q. Is that Mr. W. H. Metson the Metson who is a member of the firm of Campbell, Metson & Campbell? A. The same. [191—87]

Q. Was that letter written to you in response to a letter previously written by you to Mr. J. C. Campbell? A. Yes.

Q. Do you remember about when?

A. No; this letter was written on his own volition.

Q. Was it written in response to any letter written by you?

A. Yes, I wrote to Mrs. Patrick Reddy.

Q. That letter was written then and refers to the letter written by you to Mrs. Emily M. Reddy?

A. It is.

Mr. DAVIDSON.—We offer the letter in evidence as Complainant's Exhibit "P."

Complainants' Exhibit "P."

“Joseph C. Campbell,
William H. Metson,
Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL.

Attorneys at Law,
115 to 122 Crocker Building,
San Francisco,

October 27, 1902.

Norman Conklin, Esq.,
Bakersfield, Cal.

Dear Sir:

Your letter of late date to Mrs. Reddy, has been shown me.

You evidently have forgotten that I wrote you some months since stating to you that the moment that you could do any better with the Monache property than we are doing, you were at liberty to do so. I also wrote to your friend there who said he could dispose of the property and told him that we were willing to let him do so, and that so far as the matter being in the hands of Mr. Benson, it was not in such a way but what it could be taken out at once.

Now, if you can do any better, you are at perfect liberty to do so; and not only that, but we will join with you [192—88] in the endeavor to get the most for the property and dispose of it at as early a date as possible; but I would suggest that after you have been so informed, you do not annoy your Aunt Em. by a letter of the character that yours of the 15th is.

(Testimony of N. E. Conklin.)

If you will look up your correspondence, you will find what I say to be true.

Very truly yours,

J. C. CAMPBELL.

I did not think it wise that Mr. Conklin should send any written snarls. If he can and will do something it would please me. However I don't think he should unnecessarily annoy Mrs. Reddy, whatever his views.

W. H. METSON."

Mr. FRASER.—I desire to object to the postscript which counsel has read, for the reason that it is incompetent, irrelevant and immaterial, and hearsay, and there is nothing to show that it was made in the presence of, or within the knowledge of, the defendant J. C. Campbell.

Mr. DAVIDSON.—Q. Mr. Conklin, do you know whether or not, on the 27th of October, 1902, William H. Metson, who wrote the postscript on Complainant's Exhibit "P," was a partner of the defendant J. C. Campbell? A. Yes, he was.

Mr. FRASER.—I object to that as incompetent, irrelevant, and immaterial.

Mr. DAVIDSON.—Q. Mr. Conklin, when did you first learn of the existence of any powers of attorney purporting to have been given by Mollie Conklin and Emily M. Reddy and Edward A. Reddy as administratrix and administrator of the estate of Patrick Reddy, deceased, in regard to the sale and disposal of lieu lands? [193—89]

A. I first learned that alleged powers of attorney were in existence about July, 1902.

(Testimony of N. E. Conklin.)

Q. From whom did you receive such information?

A. From an attorney in Washington.

Q. Washington, D. C.?

A. Washington, D. C.

Q. After you learned that the deeds to the Monache lands were of record in the recorder's office of Tulare and Inyo counties, California, did you ever inquire of the defendant Joseph C. Campbell how they had come of record? A. I did not.

Q. Did you see him during that time?

A. I wasn't in San Francisco.

Q. When did you first learn, Mr. Conklin, that applications had been made for the selection of lieu lands in lieu of the Monache lands, as conveyed to the Government by the deeds which you found of record in Inyo and Tulare counties, California?

A. I think about the same time I discovered the powers.

Q. And from what source did you receive the information as to the application for the selection of lieu lands? A. An attorney in Washington.

Q. You may state what you did with reference to these selections, after learning that such selections were pending.

A. I wrote to the State land office first. I didn't know the method of procedure, so I wrote to the State land office in the State of California, notifying them not to do anything further in regard to these lands. I received no reply, and I next got a list of the lands from the land department at Washington. Then, I hunted up from the map the sections and townships and found out where the selected lands were located,

(Testimony of N. E. Conklin.)

and in that way discovered where the selected lands were [194—90] situated.

Q. About when did you find that any of the lieu lands had been selected in the State of Idaho?

A. At the time when I made this investigation, from the description sent me from Washington.

Q. About what time did you find that the selections had been made in Idaho?

A. I would have to refresh my memory from some of the papers.

Q. Any of the papers here, Mr. Conklin?

A. I guess I discovered it the same time I did the powers—no, I did not—afterwards.

Q. Now, did you afterwards write any letters to the defendant J. C. Campbell in regard to the whereabouts of the deeds of the Monache lands, or to any member of the firm of Campbell, Metson & Campbell?

Mr. FRASER.—I object to that. The letters are the best evidence of their contents.

Mr. DAVIDSON.—I asked only for letters in regard to the Monache lands.

Mr. FRASER.—I insist upon my objection.

WITNESS.—I couldn't recall unless I see the letter.

Mr. DAVIDSON.—We will have this marked Complainant's Exhibit "Q," for identification. (Marked.)

Q. Mr. Conklin, I hand you letter marked Complainant's Exhibit "Q," for identification, on the stationery of the firm of Campbell, Metson & Campbell, dated at San Francisco, November 7th, 1902, addressed to N. E. Conklin, and signed W. H. Metson,

(Testimony of N. E. Conklin.)

You may examine that letter and state whether or not you received^d it, and, if so, how, and if you know in whose handwriting the name Metson, W. H. Metson is. [195—91]

A. Yes, I recognize the letter as one which I received through the United States mails, at about the date it bears. It is signed^d by W. H. Metson.

Q. Do you know Mr. W. H. Metson's handwriting?

A. Yes.

Q. Was Mr. Metson, at the time of writing that letter, a member of the firm of Campbell, Metson & Campbell, and a partner of Mr. J. C. Campbell?

A. He was.

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial.

Mr. DAVIDSON.—Q. Was that letter written in reply to a letter previously written by you to Mr. Metson?

A. It was.

Mr. DAVIDSON.—We offer the letter in evidence, as Complainant's Exhibit "Q."

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial, and hearsay evidence, not shown to have been written in the presence of, and the contents were never known or made known to the defendant J. C. Campbell.

Mr. DAVIDSON.—Q. I show you Complainant's Exhibit "Q"—

Mr. DAVIDSON.—I will read^d the letter:

(Testimony of N. E. Conklin.)

Complainants' Exhibit "Q."

"Joseph C. Campbell,

William H. Metson.

Robert W. Campbell.

CAMPBELL, METSON & CAMPBELL,

Attorneys at Law,

115 to 122 Crocker Building,

San Francisco.

San Francisco, November 7, 1902.

N. E. Conklin, Esq.,

Bakersfield, Cal.

Dear Conklin: [196—92]

Replying to your letter of October 15th, 1902, which was delayed in reaching me: The matter that you refer to never was in the office of Campbell, Metson & Campbell, so far as Metson was concerned. I have never taken any part in the matter, except to make some enquiries from time to time and state the matter to Mr. J. C. Campbell, and Mr. J. C. Campbell is anxious to get rid of the affair and reports that advances have been made and costs paid out. The thing for you to do, I take it, is to come to San Francisco, see Mr. Campbell and have the matter straightened out.

Yours truly,

W. H. METSON."

Q. You say, Mr. Conklin, that you had, previous to this date, written to Mr. W. H. Metson, a partner of Mr. J. C. Campbell, a letter in regard to the Monache lands? A. I had.

Q. Have you a copy of that letter?

(Testimony of N. E. Conklin.)

A. I have not. I didn't keep any copy.

Q. Have you the original in your possession?

A. I have not.

Q. Where does W. H. Metson reside?

A. I am not certain. He resides either in Alameda County, or the City and County of San Francisco, State of California.

Q. Is he a resident of the State of Idaho, within the jurisdiction of this court, at this time?

A. He is not.

Q. Was Mr. W. H. Metson at the time of the writing of the letter, Complainant's Exhibit "Q," a partner of the defendant J. C. Campbell?

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial. The witness hasn't shown himself competent to testify, and it is asking for the conclusion of the witness. [197—93]

A. He was.

Mr. DAVIDSON.—Q. You may state the contents of your letter, written to Mr. W. H. Metson, to which the letter, Exhibit "Q," is in reply.

Mr. FRASER.—I object to it as incompetent, irrelevant and immaterial, and secondary evidence, no proper foundation having been laid for the introduction of secondary evidence.

WITNESS.—It was a letter denouncing the actions of the firm in regard to the Monache matters.

Mr. FRASER.—I move to strike out the answer, for the reason that the same is incompetent, irrelevant and immaterial, and no foundation has been laid for the introduction of the same.

Mr. DAVIDSON.—Q. Mr. Conklin, did you ever

(Testimony of N. E. Conklin.)

make any inquiries or have any inquiries made as to the bank in which the deeds to the Monache lands were placed in escrow, according to the agreement had at the office of J. C. Campbell?

A. I made efforts to find out where they were placed in escrow and where they were in escrow.

Q. Did you receive information as to any bank in which they might have been placed? A. I did.

Q. What inquiry did you make?

A. My sister wrote me that she had—

Mr. FRASER.—I object to the witness testifying to hearsay evidence.

Mr. DAVIDSON.—Q. You heard the testimony of your sister, Mrs. Olcese?

A. I did.

Q. You heard the statement made by her of the information she received at the office of Campbell, Metson & Campbell, that the papers were placed in escrow with the Anglo-California [198—94] Bank.

A. I did.

Q. Did your sister communicate that intelligence to you?

Mr. FRASER.—I object to it as incompetent, irrelevant, and immaterial.

WITNESS.—She did.

Mr. DAVIDSON.—Q. After receiving that information, did you make any inquiry from the Anglo-California Bank as to whether or not the papers were in escrow in that bank? A. I did.

Mr. DAVIDSON.—I will have these marked as Complainant's Exhibits "R" and "S," for identification. (Marked.)

(Testimony of N. E. Conklin.)

Q. Mr. Conklin, I call your attention to Complainant's Exhibit "R" for identification. You may state what that is, if you know.

A. That is a copy of a letter which I wrote to the Bank of California.

Q. Is that a carbon copy of the letter which you sent? A. Yes.

Q. Did you mail that letter to the Bank of California? A. I did.

Q. Did you receive a reply? A. I did.

Q. What was the reply?

A. I haven't the reply; it is lost.

Q. Have you made a search for the reply you received from the Bank of California in reply to your letter, Exhibit "R"?

A. I have searched amongst all of my papers.

Q. Were you able to find that letter?

A. I couldn't find it.

Q. Can you now produce that letter? [199—95]

A. I cannot.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "R," carbon copy of a letter dated at Bakersfield, California, June 13th, 1902, addressed to the Bank of California, San Francisco, California.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial; it doesn't tend to prove any of the allegations of the bill, and for the further reason that it is secondary evidence, and no proper foundation has been laid for its introduction.

Q. The original of that letter I believe you sent to the bank of California? A. I did.

Q. Did you make a demand on the Bank of Cali-

(Testimony of N. E. Conklin.)

for the original? A. No, I did not.

Q. It may be in their office so far as you know, yet?

A. Yes.

Mr. FRASER.—I object to it as secondary evidence.

Mr. DAVIDSON.—Q. This letter you say is a carbon copy of the original letter which you sent to the Bank of California? A. It is.

Mr. DAVIDSON.—We offer it in evidence, and ask to have it marked as offered. (Marked.)

Reading Complainant's Exhibit "R":

Complainants' Exhibit "R."

"Bakersfield, Cal., June 13th, 1902.

Bank of California,

San Francisco, Cal.,

Gentlemen:

In regard to the deeds placed in *escro* with your bank, in connection with sale of lands between my mother [200—96] Mollie Conklin and John A. Benson, will you please send me a statement of moneys received?

My mother is in the East and I have a general power of attorney which I will mail for your inspection, if you desire, or you can mail a statement to her address in San Francisco, which is in the Hotel Savoy.

Respectfully."

Q. Mr. Conklin, you stated that you received a reply to this letter, Exhibit "R," from the Bank of California? A. I did.

Q And that letter has been lost?

(Testimony of N. E. Conklin.)

A. That letter is lost.

Q. You may state the contents of the letter you received from the Bank of California, in reply to your letter marked Exhibit "R."

A. They stated that they could discover no such escrow amongst their papers.

Q. I hand you, Mr. Conklin, a letter marked Complainant's Exhibit "S," for identification. You may examine that letter and state what it is, if you know.

A. It is the original letter which I wrote to the Anglo-California Bank.

Q. What, if anything else, is shown upon that letter? A. Their answer.

Q. Did you receive that letter and the answer written thereon from the Anglo-California Bank?

A. I received the same through due course of mail.

Q. And the part of that letter in typewriting, is that the original letter that you wrote?

A. That is the original letter which I wrote.

Mr. DAVIDSON.—We offer it in evidence, as Complainant's Exhibit "S." [201—97]

Mr. FRASER.—We object to it as incompetent, irrelevant, and immaterial, and not tending to prove any of the allegations of the bill.

Mr. DAVIDSON.—Reading Complainant's Exhibit "S":

(Testimony of N. E. Conklin.)

Complainants' Exhibit "S."

"Bakersfield, Cal., June 13th, 1902.

Anglo-California Bank,

San Francisco, Cal.

Gentlemen:

Please send me a statement of moneys received on account of deeds placed in *escro* with your bank in regard to lands concerned between myself and John A. Benson.

Respectfully,

MOLLIE CONKLIN.

By N. E. CONKLIN."

Marked June 14, 1902, with stamp. Also stamp marked "Received June 14, 1902, answered." The letter is written below: "Please give us more particulars. We cannot locate such escrow on our books. Anglo. J. B."

Q. Mr. Conklin, when did you first learn that any power of attorney had been given to any person in regard to the sale and disposal of lieu lands located and selected in the name of Mollie Conklin, and Emily M. Reddy, as administratrix, and Edward A. Reddy, as administrator, of the estate of Patrick Reddy, deceased?

A. I think about July, 1902.

Q. Did you at that time receive any information as to whom the powers of attorney were alleged to be made? A. I did.

Q. What powers of attorney did you at that time learn, as to the party to whom they were given?

A. C. L. Hovey.

(Testimony of N. E. Conklin.)

Q. Do you know where C. L. Hovey resided at that time? [202—98]

A. His office was in San Francisco.

Q. When did you first learn that any powers of attorney had been given to any parties to sell and dispose of lieu lands located in the name of Mollie Conklin and Emily M. Reddy and Edward A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, in the State of Idaho?

A. About—when I received the certified copies of the powers of attorney, I discovered that Cobban held powers of attorney—alleged powers of attorney—

Q. About what time was that?

A. That was about October, 1903. I would just like to refresh my memory—

Q. Yes.

A. That's right, 1903. I knew prior to that time that a man by the name of Cobban had powers of attorney, but I didn't know where they would be used until I received these certified copies

Q. Upon learning that any of the powers of attorney were being used in Idaho, what, if anything, did you do in regard to such powers of attorney?

A. Prior to that time I had discovered that lieu lands were located in Idaho, and immediately, not only in Idaho but in different portions of the country. When I made that discovery and found out what counties the lands were located in, I sent a general revocation of all powers of attorney, and recorded them in all of these different counties, but

(Testimony of N. E. Conklin.)

Hovey was the only man I knew who held a power of attorney at that time.

Q. Did you know at that time that any powers of attorney had been issued to R. M. Cobban?

A. Not at that time. Yes, I did know at that time—I will have to change my dates. [203—99]

Q. Make any statement you desire, Mr. Conklin, as to the dates.

A. I knew that Cobban held powers of attorney, as I stated, in October, 1903, when I received these certified copies.

Q. Did you know, in October, 1903? A. Yes.

Mr. DAVIDSON.—I will have this paper marked as Complainant's Exhibit "T," for identification. (Marked.)

Q. I hand you paper marked Complainant's Exhibit "T," for identification. You may state whether or not you know what—you may state what the paper is, if you know.

A. It is a general revocation of any and all powers of attorney.

Q. By whom is the paper signed?

A. My mother, Mollie Conklin.

Q. Did you see that paper signed? A. I did.

Q. Is that Mollie Conklin's handwriting?

A. It is.

Mr. DAVIDSON.—We offer in evidence, as Complainant's Exhibit "T," the instrument identified by the witness as revocation of powers of attorney, acknowledged on the 3d day of January, 1903, by Mollie Conklin, before A. C. Mande, notary public

(Testimony of N. E. Conklin.)

in and for Kern County, California, and recorded at the request of N. E. Conklin, on the 16th day of January, 1903, in book 3 of powers of attorney, at page 98, of the records of Boise County, Idaho.

WITNESS.—Mr. Davidson, the only method I have of remembering these dates is by these papers, and I see I have got the thing mixed up there. This revocation was recorded and executed in January, 1903. Now, it was in October that, as I see by my bill for the certified copies, in 1903, in which I knew that [204—100] Cobban was holding power of attorney here.

Q. Did you, at the time that you recorded this revocation here, know that R. M. Cobban, the defendant, held any of the alleged powers of attorney from your mother, Mollie Conklin?

Judge RICHARDS.—Objected to as not tending to prove or disprove any of the issues in this case, and as not applicable to any of the defendants here.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibit "T," identified by the witness, together with the endorsements thereon.

Judge RICHARDS.—I want to get my objection in to every offer.

Mr. DAVIDSON:

Complainant's Exhibit "T."

"KNOW ALL MEN BY THESE PRESENTS, That I, Mollie Conklin, a widow, of the City and County of San Francisco, State of California, do hereby wholly revoke, cancel and annul, any, all and every Power of Attorney, and any Authority of

(Testimony of N. E. Conklin.)

Agency of every description, of any kind or any nature, executed by me, or claimed to have been executed by me, and all that show, or claim to be irrevocable on their face, are canceled and annulled and denounced as fraudulent, particularly one given or in name of C. L. Hovey.

No person whosoever, is authorized to act for me or in my place or stead, excepting N. E. Conklin, of the City of Bakersfield, County of Kern, State of California, who holds a Power of Attorney from me, and which Power is excepted from this revocation.

MOLLIE CONKLIN. [Seal]

State of California,
County of Kern,—ss.

On this 3d day of January, A. D. 1903, before me, [205—101] A. C. Mande, a Notary Public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Mollie Conklin, a widow, known to me to be the person whose name is subscribed to the within instrument, and she acknowledged to me that she executed the same.

Witness my hand and official seal.

[Seal]

A. C. MANDE,

Notary Public in and for said Kern County, State of California.”

Mr. DAVIDSON.—Q. Mr. Conklin, did you ever make any tender on behalf of your mother, Mollie Conklin, to the defendant John A. Benson, to repay the sum of \$2,750.00, paid on the purchase price of the Monache lands? A. I did.

(Testimony of N. E. Conklin.)

Q. In what form was that tender made?

A. In the form of a letter.

Mr. DAVIDSON.—I ask to have these three papers marked as Complainant's Exhibit "U-1," "U-2," and "U-3," for identification, the three papers being attached together. (Marked.)

Q. Mr. Conklin, I hand you paper marked Complainant's Exhibit "U-1," for identification

A. "U-1" is a letter which I wrote to John A. Benson, Esq.

Q. Is it an original letter or a copy?

A. It is a copy.

Q. Is it a carbon copy of a letter?

A. No, it is the original—it is the original type-writing; but I mailed him the carbon copy.

Mr. FRASER.—Q. You mean the duplicate?

A. Yes. [206—102]

Mr. DAVIDSON.—Q. Did you mail that in the United States mail to the defendant John A. Benson? A. I did.

Q. You may state what Exhibit "U-2" is.

A. "U-2" is the postoffice receipt.

Mr. FRASER.—I object to that; it speaks for itself; it is the best evidence of what it is.

WITNESS.—It is the receipt which I received from the postoffice for this letter which I sent to Mr. Benson.

Mr. DAVIDSON.—Q. Was that letter sent by registered mail? A. It was.

Q. What is "U-3"? A. It is the receipt which—

Mr. FRASER.—I object to that, because "U-3"

(Testimony of N. E. Conklin.)

states itself what it is, and is the best evidence.

WITNESS.—This is the receipt which I received in return through the mail for the letter which I had theretofore written.

Mr. DAVIDSON.—We offer in evidence Complainant's Exhibits "U-1," "U-2," and "U-3," as identified by the witness.

Mr. FRASER.—Objected to as incompetent, irrelevant, and immaterial; they do not tend to prove or disprove any of the allegations of the bill, and for the further reason that they do not constitute any legal tender, and for the third reason that Exhibit "U-1" is secondary evidence, and no proper foundation has been laid for its introduction, and for the further reason that no tender is made good or kept good in this court in this action.

Mr. DAVIDSON.—By agreement of counsel the stenographer can transcribe the exhibits into the record without reading them here. [207—103]

Mr. FRASER.—Yes, the stenographer can transcribe them into the record.

Complainants' Exhibit "U-1."

"To John A. Benson, Esq.,
No. 507 Montgomery Street,
San Francisco, Cal.,

Dear Sir: I hereby tender payment to you of the sum of twenty-seven hundred and fifty dollars (\$2,750.00), the same being money which I have received from you under a misunderstanding upon my part, of the true status of affairs in relation to certain lands known as the Monache lands, and which said

moneys was paid to me under misrepresentations of said affairs and misstatements of the true facts, and I now offer to pay the same to you.

Said money will be paid to you or your order upon your clearing the title to the said lands, which title you have attempted to cloud, and this also includes equities in lands and lieu lands arising from said lands.

Said money will be paid to you upon your notification to me that you have so cleared said titles, and after my investigating the same, by the Canadian Bank of Commerce at San Francisco, Cal.

Respectfully yours,

MOLLIE CONKLIN.

Dated at Bakersfield, Kern County, Calif., this 28th day of April, 1903.”

Complainants’ Exhibit “U-2.”

“Registered Letter } No. 1995 Post Office,
 Parcel }

Class

Ex. 01.

This space is reserved on counterpart for particulars connected with dispatch of registered piece.

Received 4/30, 1903, from N. E. Conklin a letter addressed John A. Benson, San Francisco, Cal.

Postmaster, per W. [208—104]

Complainants’ Exhibit “U-3.”

“Registry Return Receipt. Form No. 1548. Received from the Postmaster at San Francisco, Cal.

Registered Letter No. 1995, from Bakersfield, Kern Co., Cal.

Addressed to John A. Benson.

Date May 1st, 1903.

JOHN A. BENSON. 70741

(Signature of name of addressee.)

C. E. GLOVER,

(Signature of addressee's agent.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

A registered article must not be delivered to anyone but the addressee, except upon the addressee's written order.

When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage. Ex. "02."

(Reverse side of card.)

This card must be neatly and correctly made up and addressed at the postoffice where the article is registered.

The postmaster who delivers the registered article must see that this card is properly signed, postmarked, and mailed to the sender.

Postmark of delivering office

San Francisco, Cal., May 1, 1903.

and date of delivery

Post Office Department,

Official Business.

Penalty of \$300 for private use. [209—105]

(Testimony of N. E. Conklin.)

Return to:

Name of Sender, N. E. Conklin,

Post Office at Bakersfield, Kern Co., Cal.

State _____”

Mr. DAVIDSON.—Q. Mr. Conklin, are you familiar with your mother’s financial condition?

A. I am.

Q. You may state whether or not the complainant Mollie Conklin is able to repay all moneys heretofore paid her by John A. Benson on the purchase and sale of the Monache lands.

Mr. FRASER.—We object to that as incompetent, irrelevant and immaterial, for the reason that it does not tend to prove any of the allegations of the bill, and calls for a conclusion of the witness. He hasn’t shown himself competent to testify to that fact.

WITNESS.—She is.

Mr. DAVIDSON.—Q. You may state, Mr. Conklin, what tender, if any, has been made to the defendant John A. Benson, as to the repayment of moneys previously paid by him on the purchase of the Monache lands.

A. I had the money in the Canadian Bank of Commerce, San Francisco, at the time I wrote that letter.

Q. Did you ever receive any reply from the defendant Benson to the letter identified by you, Complainant’s Exhibit “U-1”?

A. I did not.

Q. Did he ever make any objection to the tender made by you for Mollie Conklin? A. Never.

(Testimony of N. E. Conklin.)

Q. Did he ever offer to return to Mollie Conklin the lands [210—106] known as the Monache lands, as conveyed?

A. Not that I know of—not to me.

Q. Mr. Conklin, do you know where your mother was residing from early in December, 1900, up till the month of June or July, 1901? A. I do.

Q. Where was she residing?

A. She arrived at my house about the 2d or 3d of December, 1900, and remained there all winter and until spring, after which she went to Santa Barbara, where I saw her—that is the southern part of the state—and she also went to Catalina Island and Los Angeles.

Q. Where were you residing at the time your mother came to your house?

A. In Bakersfield, Kern County, California.

Q. How far from San Francisco?

A. About 311 miles.

Q. During that time did your mother return to San Francisco, San Francisco County, California?

A. She did not.

Q. Do you know when she did return there, after coming to your house, in December, 1900?

A. She returned in the fall of 1901, about September.

Q. Mr. Conklin, at the time of the conference in Mr. Campbell's office, in August or September, 1900, was the name of R. M. Cobban mentioned by any party at that meeting?

A. Never mentioned; I never heard the name until

(Testimony of N. E. Conklin.)

I saw it written, in 1902, I believe.

Mr. DAVIDSON.—That is all. [211—107]

Cross-examination.

(By Mr. FRASER.)

Q. At the meeting in Mr. Campbell's office, do you remember the date of that meeting, when you were all present? A. No, I don't.

Q. It was in August or September, 1900?

A. It was in either July or August.

Q. 1900? A. 1900.

Q. That is the time that Mollie Conklin and Mrs. Reddy, yourself, Mr. Campbell and Mr. Benson were present? A. And Mrs. Coleman.

Q. That is the meeting you have reference to?

A. Yes.

Q. Is that the only meeting you were present at in the office of Campbell, Metson & Campbell?

A. That is the only meeting I was ever present at.

Q. In Mr. Campbell's office?

A. Or in anybody else's office, in regard to the sale of these lands.

Q. That is the only meeting which you attended at which this matter was discussed by anybody?

A. Yes.

Q. Had you been in Mr. Campbell's office before?

A. Whenever I would come down to the city I would go down to the office.

Q. When was it that Mr. Reddy died?

A. Mr. Reddy died in June, June 26th.

Q. You stated that it was April or May, in your direct examination.

(Testimony of N. E. Conklin.)

A. Ned Reddy died in April, the 10th of April, 1901.

Q. Mr. Reddy was your uncle? [212—108]

A. By marriage, yes.

Q. Prior to his death, you used to frequently go into the office?

A. Yes, I did; I studied law a great deal under him.

Q. After this meeting of July or August, when was the next time you were in Mr. Campbell's office?

A. The next time I went to Mr. Campbell's office was when I went with Mrs. Reddy, in 1904.

Q. That was the only other time that you remember of being present in that office? A. Yes.

Q. Did you see Mr. Campbell that second time?

A. I did.

Q. Had you seen him at any time between those two times? A. Not that I remember of.

Q. Did you ever have any conversation with him between those times in regard to these matters which are in litigation here? A. No.

Q. Now, when you were all present at that meeting, in July or August, when this matter was discussed, of the sale of these lands, did you all take part in the discussion of the terms of the contract, the conditions, etc.?

A. Yes, more or less, but Mr. Campbell did most of the talking.

Q. Did you make any suggestions in regard to it?

A. Yes.

Q. On whose behalf were you making those sug-

(Testimony of N. E. Conklin.)

gestions? A. On my mother's behalf.

Q. Was Mr. Benson represented there by an attorney? A. No.

Q. He was there alone as far as you knew?

A. Yes. [213—109]

Q. Now, you stated that Mr. Campbell was your mother's attorney in the settlement of the estate and in her private business, as I understood you.

A. The firm—sometimes she consulted Mr. Metson, and I did also.

Q. You didn't consult them any time, you stated, between the time of this first contract, this first meeting, in 1900, in July or August, 1900, until 1904?

A. No.

Q. Then, between those two dates you have no knowledge of whether he acted for your mother or not, have you, personally?

A. Excepting from his letters.

Q. Which you have introduced in evidence?

A. Yes.

Q. That is the information which you have on that subject? A. Yes.

Q. The term "base lands" has been used here, and you have used it, and I am not familiar with the term—we don't have much of it here. What do you mean when you use the term "base lands"?

A. I have since learned, since this transaction—at that time I didn't know anything about it, and for a long while afterwards I didn't, until I had occasion to investigate.

Q. You didn't know any more than I did then—

(Testimony of N. E. Conklin.)

you didn't know what the term "base lands" meant when you first— A. No, I did not.

Q. So when you talked about base lands you hadn't any idea what they meant by that term?

A. We didn't speak about it at that time, at the time of the negotiations.

Q. At the time you talked or wrote to Mr. Campbell, or had a talk with him, and he said that the base lands were in [214—110] the probate court, or something, and that it would be some trouble to get them out—

A. That was at the time of the negotiations. He stated at that meeting that he would have to obtain an order of sale of the Monache lands. That was the term we used in designating these lands, always.

Q. Now, did you keep your mother informed of all the facts which you discovered in regard to these transactions, the powers of attorney, and the recording of the deeds from herself to Benson, when you discovered that they had been recorded—did you inform her of that fact?

A. Yes, I discussed the proposition with her, but I didn't always inform her just at the time I made the discovery, because she wasn't with me. She was east a great portion of the time afterwards; in 1902, I believe, she was east.

Mr. FRASER.—I believe that is all.

Judge RICHARDS.—Q. You say you saw Mr. Cobban's name written first in 1902?

A. Yes, sir.

Q. What was the occasion of your seeing Mr. Cob-

(Testimony of N. E. Conklin.)

ban's name written at that time?

A. I wrote to an attorney in Washington, inquiring about these lands, after I discovered that deeds were on record, and he sent me a letter containing the names of the persons that held powers of attorney, in the land office at Washington.

Q. About what time was that?

A. I think that was about 1902—in July, the middle of the year. And, understand me, at that time he stated these powers were in relation to lands at Washington, not to convey the selected lands, but they were on file there at Washington—just gave me the names of the different parties.

Q. To what lands did those powers of attorney refer? A. He didn't state that. [215—111]

Q. You didn't know anything about that?

A. No, that was my difficulty, to find out where these parties were to exercise these powers.

Q. And then in 1903 you discovered where they were? A. Yes.

Q. And procured certified copies of those powers of attorney? A. Yes, I did.

Judge RICHARDS.—I believe that is all.

Mr. BLAKE.—Q. When were you admitted to the bar? A. About twelve years ago, I believe.

Q. That would be in 1898 then?

A. Yes, I think it was 1898.

Q. When did you first enter into the active practice of the law?

A. After I was admitted I was assistant district attorney in Kern County for two years, and was only

(Testimony of N. E. Conklin.)

engaged in criminal practice, prosecution, at that time.

Q. That was probably between 1898 and 1900 that you were assistant prosecuting attorney?

A. It was. You see I couldn't practice in that court in civil matters, because my father was judge, and that would disqualify me.

Q. You were actively engaged in the practice of criminal law? A. Yes.

Q. And were so engaged at the time of this meeting in 1900?

A. No, I was running a laundry—I had been promoted—I was in the laundry business. I had to get out of the district attorney's office because I was sick.

Q. And you afterwards resumed the practice of law? [216—112] A. Yes.

It was here stipulated by and between counsel for the complainants and counsel for the respective parties defendant that the Court shall make an order in this cause extending the time for the complainants to complete the taking of their testimony in chief until the 1st day of March, 1910, and also allowing the defendants sixty days from and after March 1st, 1910, in which to complete the taking of their testimony in defense herein, and that the complainants shall have a period of thirty days from and after the completion of the taking of the testimony for and on behalf of the said defendants in which to complete the taking of their testimony in rebuttal herein.

Mr. DAVIDSON.—That, gentlemen, is the testimony of these witnesses.

At this time, 5:10 P. M., January 3, 1910, the hearing was adjourned. [217—113]

[Examiner's Certificate to Testimony, etc.]

State of Idaho,
County of Ada—ss.

I, Robert M. McCracken, Special Examiner appointed by the Court to take evidence in the City of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript (consisting of pages 1 to 113, inclusive), attended before me, and that each of such witnesses was duly sworn to testify to the truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the complainants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated this 17th day of January, 1910.

(S.) ROBERT M. McCRACKEN,
Special Examiner.

[Endorsed]: Filed Jan. 17, 1910. A. L. Richardson, Clerk. [218]

[Testimony Taken at Boise, Idaho, June 24, 1910,
Before Special Examiner McCracken.]

*In the Circuit Court of the United States for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA, and
MOLLIE CONKLIN,

Complainants,

vs.

R. M. COBBAN, E. B. WEIRICK, Individually
and Also as Trustee, PAYETTE LUMBER
& MANUFACTURING COMPANY, a Cor-
poration, JOHN DOE, MARY DOE, RICH-
ARD ROE and THOMAS ROE,

Defendants.

Testimony Taken at Boise, Idaho, June 24, 1910,
Before ROBERT M. McCracken, Special
Examiner.

APPEARANCES:

WM. B. DAVIDSON, for Complainant Mollie
Conklin.

S. L. TIPTON, Assistant U. S. Attorney, for Com-
plainant United States of America.

CAVANAH & BLAKE, for Defendant Payette
Lumber & Manufacturing Company. [219*—1†]

STIPULATION.

It is hereby stipulated and agreed by and between

*Page-number appearing at foot of page of certified Transcript of
Record.

†Original page-number appearing at foot of page of Testimony as
same appears in Certified Transcript of Record.

counsel for the respective parties hereto that the depositions of E. B. Weirick, R. M. Cobban, and E. M. Hoover, witnesses on behalf of defendants E. B. Weirick, Trustee, E. B. Weirick, R. M. Cobban, and Payette Lumber & Manufacturing Company may be taken without notice before Robert M. McCracken, Special Examiner, at the United States courtroom, at Boise, Idaho, on June 24th, 1910, and that the depositions of said witnesses may be taken in shorthand and transcribed, and that the said witnesses need not sign their testimony given by them.

[Testimony of E. B. Weirick, for Defendants.]

E. B. WEIRICK, called and sworn as a witness, testified as follows:

Direct Examination.

(By Mr. BLAKE.)

Q. State your name, place of residence, and occupation.

A. E. B. Weirick; Butte, Montana; Cashier of the First National Bank of Butte.

Q. I will ask you to examine this instrument, marked "Defendant Payette Lumber & Mfg. Co., and R. M. Cobban, and E. B. Weirick, individually and as trustee Exhibit A," and state whether or not that instrument was executed by you, and whether or not that is your signature that appears thereon.

A. Yes, sir, that is my signature.

Q. You may state whether or not this instrument, marked Defendants' Exhibit "A," was ever delivered to the Payette [220—2] Lumber & Manufacturing Company. A. It was.

Q. You may go ahead and state the circumstances

(Testimony of E. B. Weirick.)

under which it was delivered to the Payette Lumber & Manufacturing Company.

Mr. DAVIDSON.—We object to that on the ground that the deed shows for itself, and is the best evidence.

Mr. BLAKE.—It don't show for itself delivery.

Mr. DAVIDSON.—He states that he delivered it.

A. Well, the terms and conditions under which that deed was delivered was upon payment to us for the land described therein at the rate of eight dollars fifty-five and a quarter cents per acre.

Mr. BLAKE.—Q. State whether or not you were paid that amount per acre for the land described in that instrument marked Defendants' Exhibit "A."

A. I was.

Q. I will ask you, Mr. Weirick, for whom were you acting as trustee at the time of the execution of this deed?

A. I was representing, as trustee, Mr. John W. Cotter, J. S. Dutton, McRae & Solverson, E. B. Weirick, personally, S. B. Kemper, R. B. Cobban Realty Company, F. C. Berendes, Andrew J. Davis, John F. Forbis, J. H. Vivian, Charles W. Clark, F. T. McBride, R. H. Wearing, Augustus T. Morgan, George C. Fitschen and W. H. Hall.

Q. Was the consideration expressed in the deed the true consideration?

A. No, sir, it was not.

Q. The true consideration was what you have already stated, so much per acre? A. Yes, sir.

Q. Give the total amount which was paid for the

(Testimony of E. B. Weirick.)

land [221—3] described in this instrument marked Defendants' Exhibit "A."

A. \$96,544.12.

Q. That was the total amount paid for all the land described in the deed? A. Yes, sir.

Q. The amount paid, however, was based upon the amount which you stated that you paid?

A. \$8.55 $\frac{1}{4}$ per acre.

Q. For all of these lands? A. Yes, sir.

Q. Do you know whether or not, Mr. Weirick, any of the parties that you represented as trustee were at that time or thereafter stockholders in the defendant Payette Lumber & Manufacturing Company, or interested in that company in any way?

A. None of them were to my knowledge; no, sir.

Q. Were you at that time a stockholder or a promoter of the defendant Payette Lumber & Manufacturing Company, or did you have any interest in that company at that time? A. None whatever.

Q. Did you ever have any interest in it prior to that time? A. No, sir.

Q. You may state, Mr. Weirick, what information, if any, you had relative to the matter of the acquisition of the base lands by Benson or Cobban—

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and for the reason that the base lands are not involved in this case.

Mr. BLAKE.—Q. I refer to the base lands which were relinquished by the United States and the right given to select the lands set forth in the bill of complaint in this suit, as being lieu [222—4] lands, described as being lieu lands.

(Testimony of E. B. Weirick.)

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and for the reason that the base lands are not involved in this case, and it is not shown by any of the pleadings that any of the base lands were ever transferred to either the defendant Benson or the defendant R. B. Cobban.

A. Why, Mr. Cobban was acting as agent for the subscribers in this syndicate in purchasing lieu land scrip. He purchased from whomever he could buy at the market price. He acquired scrip from Benson and Hyde and a number of other parties who had this base or lieu land, or whatever it is called, for sale, and we had subscribed a certain amount of money which we wished to put in this land scrip. Mr. Cobban acquired it for us.

Mr. BLAKE.—The question, Mr. Weirick, was as to whether or not you had any further information,—not who acted for you, but what information did you have as to the manner in which it was acquired.

A. Well, I don't know that I had any particular information. I understood it was a commodity for sale, like most anything else.

Mr. DAVIDSON.—We move to strike out the answer as to what the witness understood as a conclusion and not a fact.

WITNESS.—You mean—?

Mr. BLAKE.—We will get at that in a different way now, Mr. Weirick.

Q. Did you ever know Mollie Conklin?

A. I never did.

Q. Did you ever know Campbell? A. No, sir.

(Testimony of E. B. Weirick.)

Q. Benson? A. No, sir.

Q. Did you know at that time what Mr. Benson's negotiations [223—5] were with Mollie Conklin in the acquisition of this lieu land scrip?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, not tending to prove any issue in this case, and further, that the acts of the defendant Benson are not binding upon the plaintiff Mollie Conklin.

A. I did not.

Mr. BLAKE.—Q. I will ask you if you had any information or knowledge regarding the matter of the acquisition of this scrip, or this lieu land selection right, or these lieu land selection rights, other than was revealed to you by the powers of attorney which Mr. Cobban had, or other written instruments regarding the matter, which he had?

Mr. DAVIDSON.—We object to that as incompetent, irrelevant, and immaterial, and too indefinite, and for the reason that it refers to other written instruments that are not in evidence, and if any such instruments exist they will be the best evidence.

A. That is the only information I had, was what was furnished by the papers delivered by Mr. Cobban.

Mr. DAVIDSON.—By Mr. Cobban, or to Mr. Cobban? A. By Mr. Cobban to me.

Mr. BLAKE.—Q. Can you state the amount per acre which you paid Mr. Cobban for the lands described in this instrument marked Defendants' Exhibit "A"? A. No, sir, I cannot.

Q. Can you state it approximately?

(Testimony of E. B. Weirick.)

Mr. DAVIDSON.—We object to that; it is not material to any issue raised by the pleadings.

A. We paid nothing to Mr. Cobban. I paid out only on drafts authorized by Mr. Cobban to take up this scrip, Mr. Cobban, [224—6] realizing nothing out of it except his expenses.

Q. Did you pay anything for this scrip or this land selection right? A. Yes, sir.

Q. How much per acre?

A. Well, it varied. We bought scrip all over the country, and sometimes I suppose we paid from \$4.00 up to,—well, I think we paid over \$5.00 for some of our scrip.

Q. The market price varied from time to time, did it? A. Yes, sir.

Q. Well, state whether or not you paid the market price for this.

A. We paid the market price for it.

Mr. DAVIDSON.—We object to it as incompetent, irrelevant and immaterial; this is not the way of establishing the purchase price paid for something that was actually purchased. It is not alleged that they paid the market price.

Mr. BLAKE.—Q. State whether or not you paid full value for it.

Mr. DAVIDSON.—We object to that as incompetent, irrelevant and immaterial, and it is not shown that the witness is qualified to testify.

Mr. TIPTON.—And another objection,—it is a conclusion.

A. We paid the market price for the scrip.

Mr. BLAKE.—Do you know what the market

(Testimony of E. B. Weirick.)

price was at that time?

A. Mr. Cobban kept posted.

Q. Your representative? A. Yes, sir.

Mr. DAVIDSON.—We move to strike out the answer of the witness as it shows upon its face that he had no personal knowledge of the facts. [225—7]

Mr. BLAKE.—Q. State whether or not, Mr. Weirick, you were in any way representing any stockholder of the Payette Lumber & Manufacturing Company, or the company itself, or any promoter of the company, in purchasing the lands described as lieu lands in the bill of complaint or amended bill of complaint herein.

A. I did not. I represented only the parties named previously.

Mr. BLAKE.—I now offer this instrument marked Defendants' Exhibit "A" in evidence.

Mr. DAVIDSON.—We object to the introduction in evidence of the deed marked Defendants' Exhibit "A," on the ground, first, that the answer of the defendant Payette Lumber & Manufacturing Company does not show that the vendor therein named was possessed of a fee simple title to the property described therein, does not allege that the said defendant Payette Lumber & Manufacturing Company were bona fide purchasers at the time of the delivery of the deed offered in evidence, and for the further reason that the answer of the defendant Payette Lumber & Manufacturing Company does not allege facts sufficient to entitle the said defendants to plead that they are bona fide purchasers of the lands described in the deed and referred to in the amended

(Testimony of E. B. Weirick.)

bill of complaint herein, and for the further reason that the deed shows upon its face that it is a deed executed by the trustee, and it is not shown that the said trustee at the time of executing the deed was acting under the authority and instructions of those for whom he was acting as trustee. And for the further reason that the pleadings show that the land in question was patented in the name of Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased, and that the title attempted to be conveyed must be predicated upon and a record [226—8] of a court of competent jurisdiction and the settlement of the estate; and it is not shown that the instrument or the sale of the property was ever authorized by any court having jurisdiction; and for the further reason that it is not shown by the evidence that the grantor, E. B. Weirick, trustee, had any title to any of the property described in the deed and referred to in the complainant's amended bill of complaint herein.

Mr. BLAKE.—Q. State whether or not you conveyed this property with the knowledge and consent of those for whom you were acting as trustee.

A. I did.

Mr. DAVIDSON.—We move to strike that answer out, until we get time to object. We object to it as incompetent, irrelevant and immaterial, and not the proper way of proving the right and authority to transfer real estate, that being a matter that would have to be in writing under the statute, and not the best evidence, and it is a self-serving declaration.

(Testimony of E. B. Weirick.)

Cross-examination.

(By Mr. DAVIDSON.)

Q. Mr. Weirick, I believe you stated that the defendant R. M. Cobban was one of the parties for whom you were acting as trustee in executing the deed marked Defendants' Exhibit "A"?

A. R. M. Cobban Realty Company.

Q. Well, Mr. Weirick, you are one of the defendants in this case? A. I am.

Q. You filed an answer in this court jointly with the defendant R. M. Cobban.

A. Yes, sir, I believe so.

Q. If that answer alleges that you are acting as trustee [227—9] for R. M. Cobban and yourself and others, is that true or untrue?

A. I was acting for R. M. Cobban Realty Company, as trustee.

Q. Do you know who the members of the R. M. Cobban Realty Company were?

A. I know that Mr. Cobban was one of the members.

Q. Now, Mr. Cobban was acting as agent for yourself and your associates and himself in the purchase of all of this lieu scrip, or right to select lieu lands, described in the plaintiff's amended bill of complaint, was he not? A. Yes, sir.

Q. And at that time he purchased the first of these lieu land rights he did so with the express agreement that any titles conveyed would be conveyed to you as trustee? A. Yes, sir.

Q. And you and Mr. Cobban, and those with whom you were associated, furnished the money that was

(Testimony of E. B. Weirick.)

used to purchase this scrip, as you call it, from time to time? A. Yes, sir.

Q. And it was purchased for the purpose of transferring it to you? A. Yes, sir.

Q. As I remember, Mr. Weirick, the first of the lieu subscriptions involving the land herein was purchased by Mr. Cobban on or about the 19th day of February, 1901. Is that correct?

A. I can't tell the exact date of the first purchase. The first call from our subscribers was made on February 18th, 1901, for payment into my hands as trustee. [228—10]

Q. And if your answer shows that the first purchase was made on the 19th day of February, 1901, that would be correct, would it not, Mr. Weirick?

A. I think so.

Q. Now, your agreement between yourself, Mr. Cobban and your associates, for the purchase of these rights, was made long prior to that time, was it not, that is, prior to the 19th of February, 1901?

A. Yes, sir.

Q. And Mr. Cobban continued to buy land for himself, yourself, and your associates, up till about the 20th of June, 1901, did he not, that is, the lands involved in this controversy?

A. Well it ran over a period of several months,—I couldn't tell.

Q. And if your answer set forth that the last was purchased on or about the 23d day of June, 1901, that would be approximately correct?

A. I think so.

Q. This agreement was, in effect between the par-

(Testimony of E. B. Weirick.)

ties from prior to the time the first purchase was made of the lieu land selections involved in the Conklin-Reddy matter until after the final purchase had been made? A. Yes, sir.

Q. And during all of that time there was an agreement between yourself and Mr. Cobban and your associates that all titles acquired under any selections and under any other instruments should be transferred to you as trustee, without further consideration? A. Yes, sir.

Q. And you furnished, you and your associates, being yourself and Mr. Cobban and others, furnished the money that [229—11] was used by Mr. Cobban in acquiring all of this lieu scrip? A. Yes, sir.

Q. And do I understand that thereafter Mr. Cobban did transfer all of this land to yourself?

A. Yes, sir.

Q. And at the time he transferred it did you pay him anything? A. No, sir.

Q. No consideration was paid? A. No, sir.

Q. Now, Mr. Weirick, did you personally, at the time of the delivery of the various lots of papers involving these tracts of land involved in this suit examine the papers that were delivered to Mr. Cobban?

A. I did not.

Q. Then, as I understand, Mr. Cobban was simply the agent for himself, yourself and others, for the purpose of securing title to this land and afterwards transferring it to you, or procuring the transfer to you? A. Yes, sir.

Q. Did you negotiate the sale of this land from yourself, as represented by Defendants' Exhibit

(Testimony of E. B. Weirick.)

“A,” to the defendant Payette Lumber & Manufacturing Company?

A. Well, the negotiations,—the option was given the Payette Lumber & Manufacturing Company. and with the knowledge of myself and my associates.

Q. That option was given them before the execution of the deed? A. Yes, sir.

Q. Do you remember the date of the execution of the option on the lands involved in this controversy?

A. Well, the option was given, I think,—my recollection [230—12] is that an option was given to a Mr. Musser, and I won't say positively, but my impression is that his rights were transferred to the Payette Lumber & Manufacturing Company, and then a further agreement made with the Payette Lumber & Manufacturing Company and myself as trustee.

Q. Do you remember when the option was given to Mr. Musser? A. No, I couldn't tell you.

Q. Was that some time before the execution of the deed? A. Yes, sir.

Q. What would you say of the time of the giving of the Musser option relative to the time when Mr. Cobban executed the deed to yourself? Was it before or after?

A. I don't recollect that Mr. Cobban ever executed a deed to me.

Q. Mr. Cobban never conveyed any title to you, is that your recollection?

A. I couldn't say positively.

Q. What title, then, did you convey to the Payette Lumber & Manufacturing Company?

(Testimony of E. B. Weirick.)

A. I don't know whether the patents came to me or not.

Q. Is it your best recollection that this land was patented in your name?

A. Well, I can't recall.

Q. Now, you say, Mr. Weirick—

A. It is my—

Q. Go ahead. I will withdraw the question and give the witness an opportunity to finish his answer.

A. I believe it is my recollection now that Mr. Cobban, as a piece of land was approved, deeded it to me as trustee. [231—13]

Q. Do you remember whether or not the deeds from Mr. Cobban to yourself were executed by Mr. Cobban, acting as attorney in fact for Mollie Conklin and for Emily M. Reddy and Edwin A. Reddy, administratrix and administrator of the estate of Patrick Reddy, deceased? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. You state that after the option from you to Mr. Musser, that some time thereafter the option or the right to the option was transferred to the Payette Lumber & Manufacturing Company, and you entered into further negotiations with them personally. Is that correct?

A. My recollection is, the rights of the original option was transferred to the Payette Lumber & Manufacturing Company.

Q. And thereafter you made a further agreement with them in regard to the sale?

A. Well, if I did, it was under the same terms as the original option.

(Testimony of E. B. Weirick.)

Q. Now, Mr. Weirick, did you furnish to the Payette Lumber & Manufacturing Company an abstract of title of the lands involved in this case at the time you delivered the deed, or before?

A. Not to my recollection.

Q. Now, Mr. Weirick, in examining the deed marked Defendants' Exhibit "A," I notice that the grantor is E. B. Weirick, trustee. A. Yes, sir.

Q. Now, at the time you executed that deed and delivered it to the defendant Payette Lumber & Manufacturing Company did you make any request, or did they make any request of you to know for whom you were acting as trustee? A. No, sir.

Q. Did they ask you any question as to the person for whom you were trustee? [232—14]

A. Not to my recollection.

Q. Did they make any inquiry from you as to the nature of the title that you held to the property in question? A. No, sir, not that I recall.

Q. If they had made such inquiry you would recall it, would you not, Mr. Weirick?

A. Well, not necessarily, it has been so long ago.

Q. Do you remember whether or not they questioned your authority as trustee to make the deed in question?

A. I don't think they ever raised the question to me.

Q. Now, did you deliver the deed personally to the Payette Lumber & Manufacturing Company?

A. No, sir.